TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~315.~~ 117

ALEXANDER H. BAKER, APPELLANT,

vs.

WILLIAM S. T. MORTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED DECEMBER 6, 1869.

SUPREME COURT OF THE UNITED STATES.

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1 Pleas before the Honorable James M. Love, judge of the United States district court for the district of Iowa, and acting judge of the United States district court for the district of Nebraska, sitting in the United States circuit court for the district last above named, at the term of May, one thousand eight hundred sixty-seven.

ALEXANDER H. BAKER
vs.
WILLIAM S. T. MORTON ET AL.

Be it remembered that on the 8th day of July, A. D. 1867, there was filed in the said circuit court, by and on behalf of the defendants above, a paper in the words and figures following, to wit:

In the United States circuit court, district of Nebraska.

ALEXANDER H. BAKER
vs.
WILLIAM S. T. MORTON ET AL.

2 Now comes the said defendant Morton, by J. M. Woolworth, his solicitor, & moves the court to place this cause on the calandar for trial at the present term of this court, for the reason that the parties thereto are citizens of different States.

J. M. WOOLWORTH, *Def'ts' Sol.*

DISTRICT OF NEBRASKA, *ss:*

J. M. Woolworth, being duly sworn, says that the above-entitled cause was depending undetermined in the supreme court of the Territory of Nebraska at the time of the admission of this State into the Union; that the complainant therein is a citizen of & resident in the State of Nebraska, and the defendant Morton is a citizen of & resident in the State of Indiana, & the other defendants are citizens of and residents in the State of New York.

Subscribed & sworn to before me this 1st day of July, 1867.

E. B. CHANDLER, *Clerk.*

Upon which said paper appears endorsements in the words and figures following, to wit:

No. 54. U. S. cir't c't. Baker v. Morton. Motion. J. M. Woolworth, def'ts' sol. Filed July 1st, 1867, E. B. Chandler, clerk.

And afterwards, to wit, on the 8th day of July, A. D. 1867, in the said cause, was made and entered, by said circuit court, an order, in the words and figures following, to wit:

3 ALEXANDER H. BAKER
vs.
ROSWELL G. PIERCE ET AL.

Ordered that the above-entitled cause be, and the same is hereby, removed from the district court of the State of [the State of] Nebraska, into the circuit court of the United States for the State of Nebraska, and that this order be entered as of the date of July 1st, 1867.

4 UNITED STATES OF AMERICA,
Territory of Nebraska, County of Douglas, ss:

Pleas before the judge of the district court of the county of Douglas, first judicial district, Territory of Nebraska.

Be it remembered that during vacation, on the 30th day of May, A. D. 1865—present, Hon. William Kellogg, judge—the following proceedings were had, (which by agreement and stipulation of the parties were to have the same force and effect as if made and entered during term time, which will appear in the agreement and stipulation hereinafter set forth,) to wit:

Heretofore, to wit, on the 7th day of September, A. D. 1860, the complainant, Alexander H. Baker, filed in the office of the clerk and register of this court his bill of complaint; which said bill was in the words and figures following to wit:

In chancery.

To the Honorable Augustus Hall, judge of the district court for Douglas County, in the Territory of Nebraska:

5 Respectfully represents unto your honor, your orator Alexander H. Baker, of the county of Douglas, in said Territory, that in the spring of 1857 he settled upon and improved the southwest quarter of section eight (8) in township No. fifteen north, of range thirteen (13) east, in the said county of Douglas, which at that time was public land of the United States and subject to private entry under the pre-emption laws of the United States in relation thereto.

And your orator further represents that soon after his settlement on said land he erected a house thereon, into which he moved, and continued to occupy said house and premises until the 10th day of August, 1857, when he applied to the United States land office in the city of Omaha, in said county, and entered the said land by pre-emption, under the laws of the United States.

And your orator further represents that from the time of his settlement upon said land untill the present time, he has continued to keep possession of said land, either by actual or constructive possession.

And your orator further represents that after the date of your orator's settlement upon said land, and before his entry of the same from the government of the United States as aforesaid, one Roswell

6 G. Pierce, then and now of the city of New York, (and whom your orator prays may be made a party defendant to this bill,) claimed to own the aforesaid land so settled upon and improved by your orator as aforesaid, not by virtue of any law of the United States or of this Territory, but by virtue of the rules and regulations of what was known at that time as the Omaha Claim Club, an organization composed of about 100 men, the object of which was to protect every man, whether resident or non-resident, in holding 320 acres of land, as a claim upon the public lands of the United States, which organization was at that time in full force and effect in the said city of Omaha.

And your orator further represents that a few days before he entered the aforesaid land from the government of the United States, the said Roswell G. Pierce and his agent, Herman Glass, and then a few other persons who were members of the said Omaha Claim Club, came to the house of your orator, and the said Pierce, as the leader of the party, assured your orator that unless he, your orator, would agree to deed to

the said Pierce the aforesaid land, (by your orator about to be pre-empted,) when by him, your orator, pre-empted, he, said Pierce, with the assistance and aid of the said Claim Club, would take the life
7 your orator by hanging him, or putting him into the Missouri River, or in such other manner as the agents of the said Pierce and the said club might think fit and proper.

And your orator further represents that the said Roswell G. Pierce was a man of large means, and of extraordinary influence with the officers and leading members of the said Claim Club, and that your orator was a man that had no means and few friends, and knowing, as your orator did, the power, efficiency, and influence of the said Omaha Claim Club, and, knowing, as your orator did, that the said club, as agents for and under the direction and control of the said Pierce, would enforce their laws, as they had done in many cases before, to your orator's personal knowledge, when personal violence had been used to a very great extent by said club in similar cases, your orator did, under the foregoing circumstances, and in fear of his life, and under the threats as aforesaid, [did,] to some extent, agree to and with the said Pierce to deed to said Pierce the said land to be by your orator entered. But your orator distinctly avers that there was no consideration for said agreement, but was made through fear of violence in the part of the said Pierce, his agents, and the said Omaha Claim Club, and for no other reason.

8 And your orator further represents that, on the 10th day of August, 1857, he did enter said from the government of the United States as hereinbefore set forth, and during the day before and the day the entry of said land was by your orator made, the said Pierce and his agents, and the said Omaha Claim Club, kept watch of your orator until they found your orator [until they found your orator] had entered the aforesaid land from the government of the United States, when the said Pierce, his agents, and the said Omaha Claim Club again came to your orator and repeated the threats before used, and assured your orator that unless he immediately deeded to said Pierce the aforesaid land, he, Pierce, and said club would put him, your orator, in the Missouri River, and, in order to show their intention to carry out their threats and violence towards your orator, they immediately published hand-bills calling together the said club to enforce their rules, and compel your orator to convey said land, or inflict their usual punishment for a violation of their laws, which, as your orator believes, would have been the taking of your orator's life in case he refused to convey said land.

9 And your orator further represents unto your honor that by means of the aforesaid threats on the part of the said Pierce and his assistants, and in fear of your orator's life, he did, on the said 10th day of August, 1857, convey by deed in the usual form the aforesaid land by him pre-empted to said Pierce—which deed was duly acknowledged, in order to entitle it to be recorded in the office of the register of deeds in the said county of Douglas—which deed, as your orator is informed and believes, was by said Pierce duly recorded in the office of said register.

Your orator, therefore, charges that the said conveyance, by your orator made to the said Pierce of the aforesaid lands, was procured to be made by threats and violence and in fear of your orator's life; and that the said Pierce never paid your orator any consideration whatever for said land, but that the said conveyance was made without any consideration whatever, and for the reason as hereinbefore set forth, and for no other reasons.

And your orator further represents that one E. B. Weston, of the State of New York, claims some interest in the aforesaid described land, and, therefore, ask that he may be made a party defendant to this bill.

10 Your orator further says that one William S. T. Morton, of the State of Indiana, claims some interest in the aforesaid land by virtue of a judgement lien. And your orator therefore prays that said Morton may be made a party defendant to this bill.

And your orator had well hoped that the said Roswell G. Pierce would have reconveyed to your orator the aforesaid land by him so wrongfully procured from your orator; but now, so it is, may it please your honor, the said defendant Roswell G. Pierce, combining and confederating together with divers other persons, to your orator now unknown, whose names, when discovered, he prays may be inserted herein, with apt words to charge them, and contriving how to injure and defraud your orator in the premises, refused to reconvey to your orator the aforesaid described land, claiming at times that your orator, for a valuable consideration, agreed to convey the said Pierce, and at other times claim that, after the entry of said land by your orator, the said defendant Pierce bought said land of your orator, and paid therefore a valuable consideration; whereas your orator charges the contrary to

11 be true; that whatever agreement or understanding was made by your orator before the entry of said land was without any consideration, and done through fear of his, you orator's, life, as hereinbefore set forth; and further charges that the conveyance made on the 10th of August, 1857, by your orator to the said Pierce, was forced from your orator through threats of personal violence to your orator by the said Pierce and his assistants, and without any consideration whatever, all of which actings and doings, frauds and practices, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In tender consideration whereof, and inasmuch as your orator is remidiless in the premises at and by the strict rules of the common law, and cannot have adequate relief, except in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said Roswell G. Pierce, E. B. Weston, William S. T. Morton, and their confederates, may full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated and charged, as fully and particularly as if the same

12 was here repeated and thereunto directly interrogated paragraph by paragraph, and not only to the best of their respective knowledge, remembrance, and belief, but also to the best and utmost of their several and respective information, hearsay, and belief, but not under oath; and the oath of the parties defendants being hereby waived; and that it may be decreed by the decree of this honorable court that the said conveyance made by your orator, the said Alexander H. Baker, to the said Roswell G. Pierce, on the said 10th day of August, 1857, was procured by the said Pierce and his assistants by force and threats of violence and without consideration, and therefore void and inoperative; and that the said Roswell G. Pierce may be decreed by this honorable court to reconvey to your orator the aforesaid land by a given time to be set by this court, by deed duly executed and acknowledged in the usual form. And that your orator may have such other and further relief in the premises as to your honor may seem to be right and proper and the nature of the case may require, may it please your honor to grant to your orator the writ of subpœna directed to the said Roswell

G. Pierce, E. B. Weston, and William S. T. Morton, commanding
13 them, and each of them, that they be and appear before your honor in this court, at a day to be therein named, then and there to answer the premises, and to stand and abide and perform such order and decree as to your honor shall seem agreeable to equity.

And your orator will ever pray, &c.

REDICK & BRIGGS,
Sol. for Complainant.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Alexander H. Baker, being by me first duly sworn, deposes and says that he is the complainant in the foregoing bill of complaint; that he has heard the same read and knows the contents thereof; and that the same is true of his own personal knowledge, except those matters therein stated on information and belief, and as to those he believes it to be true.

ALEXANDER H. BAKER.

Subscribed in my presence and sworn to before me this sixth day of September, 1860.

[SEAL.] GEORGE ARMSTRONG,
Probate Judge.

14 And thereupon, on the same day and year aforesaid, to wit, the 7th day of September, A. D. 1860, there was filed in the office of the clerk and register of said court a certain affidavit for service by publication; which said affidavit, after diligent search, cannot be found among the files in this office.

And thereupon afterwards, to wit, on the 23d day of October, A. D. 1860, there was filed in the office of the clerk and register of said court an affidavit of publication herein; which said affidavit, after dilinquent search, cannot be found among the files in this office.

And thereupon afterwards, to wit, on the 23d day of October, A. D. 1860, there was filed in the office of the register of said court a default; which said default cannot now be found among the files in this office.

And thereupon afterwards, to wit, on the 2d day of February, A. D. 1861, there was filed in the office of the clerk and register certain interrogatories; which said interrogatories, after diligent search, cannot be found among the files of this office.

15 And thereupon afterwards, to wit, on the same day and year last aforesaid, there was filed in the office of the clerk and register of said court an affidavit of publication; which said affidavit cannot now be found among the files of this court.

And thereupon, on the same day and year last aforesaid, there was filed in the office of the clerk and register of said court an order for a commission; which said order cannot now be found among the files of this court.

And thereupon, on the same day and year last aforesaid, there issued out of the office of the clerk and register of said court a commission; which said commission cannot now be found among the files of this court.

And thereupon afterwards, to wit, on the 1st day of May, A. D. 1861, there was entered on the journal record of said court a decree herein; which said decree is in the words and figures following, to wit:

ALEXANDER H. BAKER
vs.
ROSWELL G. PIERCE, E. B. WESTON, & WILLIAM S. T. Morton.

This cause having been brought to a hearing upon the bill of complaint filed in this cause; the said defendants having been duly
16 served with notice of this action by publication as required by law, (the said defendants being non-residents of the Territory of Nebraska,) and due proof of said publication having been filed in this court; and the said defendants failing to appear in said court, and answer, plead, or demur to said bill in the time required in said notice; and the said defendants still failing to appear and plead, answer, or demur to the same, it was thereupon ordered by this court that the default of the said defendants be entered in this cause, and that the said bill of complaint be taken as confessed by all and each of the said defendants.

And the said complainant having applied to the court for an order directing a commission to issue out of and under the seal of this court to take the testimony of John V. Smith, who resides in the State of Wisconsin; and the said complainant having filed in this court the written interrogatories to be propounded to said Smith, and also due notice to said defendants by publication, as required by law, stating the time and place where the application for said commission would be heard, and due proof of the publication of said notice having been filed in
17 court, it was therefore ordered that said commission issue as prayed for by said complainant.

And the testimony of said witness having been taken under said commission, and duly returned to this court, and filed in this cause; and the counsel for the complainant having been heard, and the said defendant still failing to appear in this cause, either in person or by counsel, and the court having duly considered the proof, testimony, pleadings, and arguments, and it satisfactorily appearing; and the court do find from the said testimony, proofs, and pleadings that the said deed of conveyance, mentioned in the said bill of complaint, from the said complainant Alexander H. Baker to the said defendant Roswell G. Pierce, dated August 10th, A. D. 1857, conveying the southwest quarter of section eight (8) in township fifteen (15) north, of range thirteen (13) east, in said county of Douglas, in Nebraska, was unjustly, fraudulently, and corruptly obtained by said Pierce from said complainant Baker, and through threats of personal violence made by said Pierce and his agents to the said Baker; and it further appearing that said Baker executed said conveyance through fear of personal violence from said Pierce
18 and his agents, and that the said Pierce never paid the said Baker any consideration for said land, and that said Baker never received any consideration for the same; and it further appearing to the satisfaction of the court that on the 10th day of August, A. D. 1857, the said Baker pre-empted the said tract of land, and purchased the legal title thereto from the government of the United States, and that he is the owner thereof at this time; and the court finding the equity of the case with the complainant, it is thereupon ordered and adjudged and decreed by the court that the said defendant Roswell G. Pierce, within 10

days, deliver up to the complainant the said deed of conveyance from the said Baker to said Pierce, the said bill mentioned, dated the 10th day of August, A. D. 1857, to be cancelled, and also that the said defendant Pierce, within said 10 days, by a competent deed of conveyance for that purpose, release and convey to said Baker by warranty deed against his own acts the above-described premises; and that, in default thereof, this decree shall operate as a reconveyance of said premises to said complainant, with all the rights, privileges, and interest which he had to and in said premises, the same as though said deed of the 10th of August, 1857, had never been executed; and it is further ordered, adjudged, and decreed that the said deed dated the 10th of August as aforesaid, was, when executed, and still is, null and void, and that the said defendants E. B. Weston and William S. T. Morton, and all other persons claiming under or through the said Pierce, have no lien, incumbrance, or interest in or to said premises, or any part thereof, as purchasers, mortgagers, judgement creditors, or incumbrances of the said Pierce, or of any person claiming under him; and it is further ordered, adjudged, and decreed that the said Pierce, and all persons claiming under him, shall immediately deliver full and peaceable possession of said premises to said complainant, and that the said defendant Pierce pay all the costs of this suit, and that in default thereof execution shall issue therefor as on judgement at law.

And thereupon afterwards, to wit, on the 13th day of November, A. D. 1862, there was filed in the office of the clerk and register of said court a certain motion; which said motion cannot now be found among the files of this court.

And thereupon, on the same day and year last aforesaid, there was filed in the office of the clerk and register of said court a certain affidavit; which said affidavit cannot now be found among the files of this court.

And thereupon, on the same day and year as last aforesaid, to wit, on the 13th day of November, A. D. 1862, there was filed in the office of the clerk and register of said court the several answer of William S. T. Morton; which said answer was in the words and figures following, to wit:

In chancery.

The several answer of William S. T. Morton, one of the defendants, to the bill of complaint of Alexander H. Baker, complainant.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereto, says he knows not and has not been informed, save by the said complainant's said bill, and cannot set forth as to his belief or otherwise, whether the said complainant ever settled upon or improved, or erected a house upon the lands in said bill described; nor whether he ever applied at the United States land office, or entered said premises by pre-emption or otherwise; but this defendant admits that the said complainant did, on the tenth day of August, one thousand eight hundred and fifty-seven, occupy, and, from thence to this day, has occupied, said premises, and has been in the actual possession thereof; and says, upon information and belief, that the said complainant has from the day aforesaid occupy said premises as the tenant of the defendant Pierce.

And this defendant, further answering, says he knows not and has not been informed, save by the said complainant's said bill, and cannot set forth as to his belief or otherwise, whether after the date of the said complainant's settlement upon said land, and before his entry of the same, the said Pierce claimed to own the same; nor by virtue of what authority or right, or laws, or regulations, if any, he claimed to own the same; nor whether any such organization as the Omaha Claim Club ever existed; nor, if any such club ever existed, whether its objects were those stated in said complainant's bill of complaint, or otherwise; but if any such an organization ever existed, this defendant expressly de-
22 nies that it was in being on the day aforesaid, but says, upon information and belief, that it was disbanded and dissolved a long period, to wit, one month prior to said day.

And this defendant, further answering, says he knows not and has not been informed, save by the said complainant's said bill, and cannot set forth as to his belief or otherwise, whether said Pierce or said Heman Glass, or any member of said Claim Club, ever made or addressed to the said complainant the threats, or any or either thereof, in said bill set forth, or any other threats, whatsoever; nor whether said Pierce was a man of large or any means, or extraordinary or any influence with the members of said club, or any of them; nor whether the said complainant was without means and had but few friends; nor whether said club had ever enforced its laws, or used great or any violence; but this defendant, upon information and belief, denies that said club, or any of its members' kept any watch of said complainant when he pre-empted said lands, or to show their intention to enforce their alleged threats, or for any other purpose relating to said complainant, published hand-bills con-
23 vening said club, or that the said defendant, acting under the influence of any fears excited by such threats, if any such were addressed to him, either agreed or did make the deed in said bill described and referred to; and this defendant, upon information and belief, denies that such deed was without consideration, or was made under the influence of any fear whatever in the said complainant, and this defendant here charges the fact to be, that the said deed was the free and voluntary act and deed of the said complainant, and was made upon due and mature deliberation, and for a good and valuable consideration, the exact nature whereof is to this defendant unknown.

And this defendant, further answering, says, upon information and belief, that said Pierce was, on the tenth day of August, in the year first aforesaid, and ever since has been, and still is, the true and lawful owner in fee of the said premises, free and divested of all claims thereon, or interest therein, of the said complainant; that on or about said day, having occasion to borrow a large sum of money, to wit, the sum of about five thousand dollars, he applied to this defendant to ad-
24 vance the sum to him; that this defendant, being advised that he was the owner of said premises, in consequence thereof and the credit which he thereby acquired, consented to and did advance the said sum to him, the said Pierce; that the said Pierce having failed to repay said money to this defendant, this defendant afterwards, to wit, at the term of June, one thousand eight hundred and sixty, in this honorable court, sitting at law, recovered the same, or a large part thereof, of the said Pierce; that the sum of twenty-five hundred dollars remains of the said judgement unpaid, unsatisfied, and neither discharged, vacated, or modified, as by the record thereof remaining in the clerk's office of said court, reference being thereunto had, will more fully appear; and this defendant says his said judgement is a lien and incum-

brance upon the said premises; that neither the said Pierce, nor the other defendant in said judgement, is possessed of property, real or personal, either in law or equity, sufficient to satisfy any considerable portion of said judgement; and if the aforesaid premises should be, by the decree of this court, discharged of this defendant's aforesaid lien
25 thereon, he would be unable to collect his said judgement, or any considerable part thereof; wherefore this defendants insists that his said judgement ought, in equity, to be held a better claim thereon than any claim thereon or interest therein which the said complainant has or claims.

And he denies all combination and confederacy charged against him in the said bill; without that any other matter or thing in the said bill contained, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed and denied, is true to his knowledge and belief; all which matters and things is ready to aver, prove, and maintain as this honorable court shall direct, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JAMES M. WOOLWORTH,
Solicitor & of Counsel for Def't Morton.

THE TERRITORY OF NEBRASKA, *County of Douglas, ss:*

James M. Woolworth, being duly sworn, says he is the solicitor for the defendant Morton, in the foregoing answer, and that said
26 Morton is a non-resident of, and not in, this Territory; that said answer is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

JAMES M. WOOLWORTH.

Subscribed in my presence, and sworn to before me this 13th day of November, 1862.

[SEAL.]

BYRON REED,
Notary Public for Douglas County, N. T.

And thereupon afterwards, to wit, on the 24th day of November, A. D. 1862, there was entered upon the journal record of said court, and approved by the judge of said court, the following entry, to wit:

ALEXANDER H. BAKER
vs.
WILLIAM S. T. MORTON, IMPLEADED WITH ROSwell G. Pierce et al. } In chancery.

The motion to open the decree entered in this cause, and for leave to said defendant Morton to be let in to defend the bill of complaint
27 of the said complainant, after hearing the counsel for the respective parties, it is hereby ordered by the court that as to said defendant Morton the said decree be and is hereby vacated & altogether held for naught, and he is at liberty to answer to said bill.

W. P. KELLOGG, *Judge.*

And thereupon afterwards, to wit, on the 3d day of December, A. D. 1862, there was filed in the office of the clerk and register of said court the replication of the said complainant to the answer hereinbefore set forth; which replication cannot now be found among the files of this court.

And thereupon, on the same day and year as last aforesaid, there was filed in the office of the clerk and register of said court an order of reference; which cannot now be found among the files of this court.

And thereupon afterwards, to wit, on the 26th day of January, A. D. 1863, there was filed in the office of the clerk and register of said
28 court certain interrogatories; which said interrogatories cannot now be found among the files of this court.

And thereupon afterwards, to wit, on the 3d day of February, A. D. 1863, there was filed in the office of the clerk and register of said court certain cross-interrogatories; which cannot now be found among the files of this court.

And thereupon, on the 7th day of February, A. D. 1863, there issued out of the clerk's office a commission to justice of the peace, Charleston City, Nevada Territory; which said commission cannot now be found among the files of this court.

And thereupon afterwards, to wit, on the 22d day of October, A. D. 1863, there was filed in the office of the clerk and register of said court certain interrogatories; which said interrogatories were in the words and figures following, to wit:

Interrogatories to be propounded to John N. Smith, of Janesville, in the State of Wisconsin, a witness to be produced, sworn, and
29 examined in a certain action now pending in the district court of the first judicial district of the Territory of Nevada, sitting within and for the county of Douglas, wherein Alexander H. Baker is complainant, and Roswell G. Pierce & others are defendants, under a commission issued out of said court, directed to Moulton Farnham, of Attica, in the State of New York, a commission on the part of said complainant.

First interrogatory. What is your name, age, occupation, and place of residence.

Second interrogatory. Do you know the parties, complainants and defendants, in the title to these interrogatories named, and which of them; and how long have you known them respectively?

Third interrogatory. State whether in the year 1857 you was in the Territory of Nebraska; and, if so, in what part and time?

Fourth interrogatory. State if you know whether or not in the year 1857, the complainant, Alexander H. Baker deeded any land in section 7 in township 15 north, of range 13 east, near Omaha. And
30 if you should answer that he did, state at about what time; and also state if you knew under what circumstances he deeded the same; and also state if you know whether he, said Baker, ever received any consideration therefor; and should you answer that he did not, still, if you know what circumstances caused him to deed the same, declare the truth fully.

Fifth interrogatory. Should you answer that said Baker deeded said premises to said Pierce, state what and all you know about the transaction, and your means of knowledge; and also state what connection said Pierce or his agents had with the same.

Sixth interrogatory. State whether or not you knew anything relative to the "Omaha Claim Club;" and, if so, what; and also state at what

time and how long it existed, and what were, if you knew, the objects of its organization; and also state whether it had anything to do with said Baker in the matter of the making of said deed.

Seventh interrogatory. State if you knew whether at or about the time said Baker deeded said premises to said Pierce, there was any negociation or settlement relative to a nursery near Omaha which said
31 Baker had charge of at that time, and whether any money was paid you by said Pierce on such settlement, if one was made; and, if so, how much, and who was the attorney who acted for said Pierce in the transaction? State fully all the circumstances.

Lastly. State whether you knew any other matter, fact, or circumstance, material to the subject of this, your examination; and, if so, state the same fully, together with your means of knowledge.

REDICK & BRIGGS,
Sol's for Complainant.

To which was attached the following notice:

In district court Douglas County, in chancery.

ALEXANDER H. BAKER, COMPLAINANT,
vs.
ROSWELL G. PIERCE, ET AL., DEFENDANTS.

To said defendant Morton:

Take notice that said Baker has filed in the register's office of said court, in this cause, interrogatories to be propounded to John W. Smith, of Janesville, in the State of Wisconsin, a witness to be produced,
32 sworn, and examined thereon, for and on the part of said Baker, under a commission for which said Baker will apply on the 22d day of October, 1863, at 10 o'clock a. m.

REDICK & BRIGGS,
Sol's for said Baker.

On which notice was the following endorsement, to wit:

Service of a copy of this notice is admitted the 10th day of Oct., 1863.

JAMES M. WOOLWORTH,
Solicitor for Morton.

And thereupon afterwards, to wit, on the 22d day of October, A. D. 1863, there issued out of the office of the clerk and register of said court a commission to Moulton Farnham to take depositions; which said commission is in the words and figures following, to wit:

The district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery, to Moulton Farnham, of Attica, in the State of New York, greeting:

33 Know you that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize and require you to examine, upon interrogatories annexed to this commission, John N. Smith, of Janesville, in the State of Wisconsin, but now in said Attica, in a certain cause pending in this court, wherein Alexander H. Baker is complainant and Roswell G. Pierce, W'm S. T. Morton, et al., are defendants, on oath to be by you administered, to take and certify the depositions of the said witnesses,

and return the same in accordance with the statute in such case made and provided.

Witness the Hon. W'm P. Kellogg, judge of the district court of the first judicial district, at the city of Omaha, on the 22d day of October, A. D. 1863, at 11 o'clock a. m.

[SEAL.] J. H. KELLOM, *Register*.

And thereupon afterwards, to wit, on the 7th day of November, A. D. 1863, there was filed in the office of the clerk and register
34 of said court certain depositions of witnesses; which said depositions are in the words and figures following, to wit:

In district court of Douglas County, in chancery.

ALEXANDER H. BAKER
vs.
W'M S. T. MORTON, IMPLEADED WITH ROSWELL G. Pierce et al.

Depositions taken in a certain cause pending in Douglas County, in chancery, wherein Alexander H. Baker is complainant and William T. Morton, impleaded with Roswell G. Pierce et al., are defendants, taken in pursuance of an order of reference directed to the undersigned, master in chancery, and taken upon the notice served by solicitor of defendant Morton upon solicitors of complainant.

And pursuant to said notice parties met at my office on the 25th day of May, 1863, and by consent adjourned till May 30th, 1863, at 10 o'clock a. m.

MAY 30TH, 1863.

Parties & their solicitors met pursuant to adjournment. Redick & Briggs appeared for complainant; James M. Woolworth appeared for def't Morton.

35 Jesse Lowe, a witness produced, sworn, and examined on part of defendant Morton:

Ques. 2. Do you know the complainant, Alexander H. Baker; if so, how long have you known him?

Ans. I known him for five or six years.

3. State whether or not he is a man of ordinary or more than ordinary physical power & courage.

(Objected to by compl't as immaterial.)

Ans. His powers in those particulars, I should say, were anyhow ordinary.

4. State whether or not you were ever a member of the Omaha Claim Club; whether or not you ever held any, and, if so, what, office therein, and how long you continued such member and office.

(Objected by compl't as leading.)

Ans. I was a member during its existence, and was during the most, if not all the time, captain of the club.

5. How late in the year 1857 did you continue to attend its meetings?

(Objected to by compl't as irrelevant & immaterial.)

36 Ans. I don't remember up to what time the club continued to hold general meetings, nor when I attended the last meeting.

6. How long did the said club continue efficient & powerful to muster as many as a hundred men?

Ans. I could not tell, from the fact that I don't think effort was made after the claim excitement had pretty well subsided.

7. State, as near as you are able, when this excitement did subside.

Ans. It was greatest in February and March, 1857; it held itself firm, then with its full strength, perhaps, until the land office was open, and people in this Omaha claim district commenced securing their lands. It gradually grew weaker, until claims were finally all secured. What time that was, I can't exactly state.

Cross-examination.

8. Don't you remember a large gathering of the club, and a big excitement over a contest between Joseph Barker and some minister
37 of the Gospel, held on the east side of Pioneer Block in the summer of 1857?

(Objected to by def't as not proper cross-examination & immaterial.)

Ans. The Barkers had numerous meetings and trials, but the one referred to I was not present.

9. Do you remember the meeting held in Pioneer Block by the club, in which it was ordered that one Callahan should be put into the Missouri River unless he withdrew his filing on certain lands he claimed?

(Objected to by def't as not proper cross-examination.)

Ans. I think the sentence of Callahan was to be turned over to the committee, and to be taken to land office, & made to withdraw his filing, and unless he withdrew his filing voluntarily, the committee were to take such course with him as they saw fit to compel him to withdraw the same.

10. Do you know whether the committee put him in the Missouri River or not?

Ans. Only from information.

38 11. What did the committee report to the club after he was put in their charge?

(Objected to by def't on ground that it calls for hearsay testimony.)

Ans. They made no report in form to the club.

12. What did you learn from the committee, or some member or members of the club, of what the committee did with this man Callahan after he was put in their charge?

(Objected to by def't that it calls for hearsay testimony.)

Ans. I learned from the committee that they put him in the river a sufficient length of time, and brought him back when he agreed and did withdraw his filing after compromising with the opposite party claiming the land.

13. Do you know the land that Callahan claimed at that time? and, if so, state what it would have sold for at that time as a claim.

(Objected to by def't as not proper cross-examination and immaterial.)

Ans. I know the land, and at that time would have sold for
39 probably two thousand dollars.

14. Do you remember another instance to which I will call your attention, the case of Jacob Shull; &, if so, what course was taken by the club to compel him to withdraw his filing on certain tract of land?

(Objected to by def't as not proper cross-examination & immaterial.)

Ans. I remember it; Shull was arrested by the club for filing on and ju aping a claim belonging to another party, and informed that he must withdraw his filing on the same, & thereupon he proceeded to the land office with a select committee of the club and did so.

15. State whether or not the committee of this club carried muskets with them when they waited upon a claim-jumper to make him withdraw his filing.

(Objected to by def't as not proper cross-examination.

Ans. As a general thing they did.

16. On other occasions, was not the Omaha, Florence, and
40 Bellevue Claim Clubs consolidated; and how many men, in your opinion, could be raised at any time for the purpose of enforcing their rules and regulations?

(Objected to by def't as immaterial and irrelivant.)

Ans. They did form a league for mutual aid at one time; I suppose the club could raise from one to three hundred men.

17. Who was the president of the club, say in March?

Ans. It was Mr. Hanscom.

18. Who was president after Hanscom?

Ans. If they had one after him, I think it was Joseph Barker.

Re-examination.

19. When did these transactions with Callahan occur?

Ans. In March; I know snow was on the ground; it possibly might have been in April, but no later.

41 20. When did those transactions occur with Shull?

Ans. In February or March.

21. State whether or not muskets were used, as you have stated, after the first of May. If so, when & in the case of what person?

Ans. I don't remember of any being used after that time.

22. When did the three clubs of which you have spoken act in concert the last time?

Ans. In February or March.

23. State whether or not the club continued in its vigor after Hanscom ceased to be president.

(Objected to by compl't as leading and not proper cross-examination, & re-examination upon the same thing in chief.)

Ans. About that time he entered his land, & took but little or no further interest, and it gradually thereafter lost its power as well as its organization.

42 *Re-cross-examination by compl't*

23. You state in answer to question No. 21 that after the month of May, the committee were not in the habit of using muskets. Do I understand you to mean that they did not, to your knowledge, but may they not have used them and other arms, & you not have known it?

Ans. It is possible they did; I never knew it.

JESSE LOWE.

Andrew J. Hanscom, a witness produced, sworn, and examined on of def't Morton, says:

Ques. 1. State if you know when the Omaha Claim Club ceased to be efficient to execute its judgements.

Ans. I don't know what time it ceased to be efficient, but I think some time in the summer of 1857.

2. State as near as you are able whether it was the forepart, middle, or last part of that summer.

(Objected to by compl't as leading.)

Ans. I am not able to fix the date of any month; I resigned the position in the early of the summer, I think some time in May;
43 and after that others were elected president of the club; I think Doctor Miller next after me; I think he was president along until some time in June, but I am not certain, and I did not think it was efficient after that time; I was not familiar their proceedings after that, and did not attend the meetings regularly.

3. State whether or not the club was efficient as late as August, 1857.

(Objected to by compl't as leading, and it calls for the opinion of the witness after he stated that he knew very little about it, & seeks to mislead him.)

Ans. I can only give my opinion; I should think it was not because I did not attend their meetings.

6. State whether or not you were ever the attorney of Roswell G. Pierce. If so, during what time?

Ans. I was the agent of Roswell G. Pierce from some time in 1856 to 1857, and did some business for him up to June or July, 1857, & after that time he was here.

7. State whether or not you on his behalf negociated with any person for a settlement of the controversy between him and the compl't, Alexander H. Baker, in reference to Beebee's pre-emption.

(Objected to by compl't as leading.)

44 Ans. Mr. Seely was employed to assist me in trying to make a settlement, & Mr. Seely did the business.

8. State whether or not you were ever present at any such negotiations, yourself & Seely representing Pierce, & any other person representing Baker. If so, when & where, & who was that person or who were those persons?

(Here defendants asks witness if any such negotiations was, whether it was in writing; &, if so, objects to the question as not the best evidence.

Witness answers: I do not remember whether there was any agreement reduced to writing or not.

Def't now objects to question as leading.)

Ans. I was present with Mr. Seely at a meeting at his office, and I think that Mr. Smith & Mr. Redick were present, and I suppose they represented Mr. Baker; I so understood at that time. It was, I think, some time during the summer of 1857, but can't state month. It was pretty warm weather.

9. State whether or not any terms of settlement were there and then agreed upon between the respective parties; if so, what the same were.

(Objected to by compl't, because the pleadings do not make this issue of settlement.

45 Ans. I believe there were terms of settlement agreed upon between Mr. Smith & Mr. Redick, & Seeley & myself; Mr. Seely did the principal part of the negociating. If I remember correctly, they were to pay Mr. Baker four hundred dollars, but I won't be positive; I understood, at the time, Mr. Baker was to deed over the land he had pre-empted, and I think Mr. B——— also, but I might be mistaken.

10. State as near as you are able when the United States land office for this district opened for pre-emption.

Ans. I can't say exactly, but I think it was some time in February or March.

11. State as near as you are able when you proved up your own pre-emption.

(Objected to by compl't as immaterial.)

Ans. I think it was in March, but I am not positive, as I have nothing here to tell by; it may have been as late as April.

12 State as near as you are able when most persons in this immediate vicinity entered their pre-emption claims.

Ans. It is impossible for me to tell.

Cross-examination by complainant.

13. Who was elected president of the Claim Club after Doctor Miller?

Ans. I cannot state positively, but I think it was Joseph Barker.

46 14. Are you sure that that settlement was to be with Baker or with Smith, growing out of a nursery difficulty between Smith and Pierce?

Ans. I understood at the time it was to settle with Mr. Baker, although Mr. Baker was not present.

15. Do you not remember of the difficulty between Smith and Pierce, about the nursery, being talked over about that time, & that Smith claimed of Pierce a large damage of some two thousand dollars or thereabouts?

Ans. I think I did hear of some difficulty; some dispute about damages; I don't remember what amount he claimed, or the particulars in relation to it.

16. Do you not remember that I presented you a little piece of paper, about as large as the paper I hold in my hand, saying that Smith will settle with Pierce on certain terms, & his name signed to it, & Harris & Redick, as his attorneys?

(Objected to by def't as not proper cross-examination & immaterial.)

Ans. I do not remember of any such circumstances, but it might be so. It seems to me that I had some conversation with Redick, in which he represented that Harris & Redick were attorneys of Mr Smith.

47 17. Did you ever have any conversation with Mr. Baker or Mr. Brown about this settlement in any way?

Ans. I don't think I ever did at that time. I don't think I know Mr. Brown.

18. Are you willing to swear that that settlement was made with Mr. Baker & Brown, or with any one representing them, Baker & Brown; or might you not be mistaken, and the settlement had been for the benefit of Smith, growing out of the nursery difficulty?

Ans. I could not swear it was made with Mr. Baker & Brown, but I understood that Mr. Redick & Smith represented them; I don't think I could be mistaken about it, but all people are liable to mistakes; I suppose they represented Baker & Brown at the time, but I don't, of my own knowledge, from Mr. Baker & Brown, except what [what] Mr. Redick & Smith said.

19. Do you state Mr. Smith & myself said we represented Baker & Brown?

Ans. I cannot say what they said, but I understood they were [they were] attorneys of Mr. Baker.

20. How much money did you see pass in that settlement; was Baker or his attorneys, who you say represented him, paid any money

48 at that settlement?

Ans. I can't say whether I saw any money paid or not; I know I did not to Mr. Baker, but whether I did to his attorneys I cannot say.

21. How long after the settlement you refer to was made was it till Baker entered the land?

Ans. I do not know when he entered the land, but I supposed it was entered previous to that, the day when we met to settle.

22. What made you suppose so?

Ans. I don't know what made me suppose, but what I based my opinion upon I don't now remember.

23. Were there not two quarters of land in dispute?

Ans. I do not know whether the're full or not, but were two entries, Brown & Baker's.

24. Were you familiar with the price of that land claimed at that time; and, if so, what was its value?

(Objected to by def't as not proper cross-examination, & the witness does not appear to be competent to testify on that point.)

Ans. I can't say I was familiar with that land, but was with the land in the neighborhood.

25. What was land considered worth in the neighborhood
49 at that time, and what, in your opinion, would the pre-emption of Brown & Baker have been worth at that time?

Ans. It ranged from fifteen to twenty-five dollars per acre. I should think that this land was worth about the same.

26. Do you know, of your own knowledge or from hearsay, that Pierce paid Baker or Brown, or his attorneys, if any he had, one dollar of money or property in the settlement you allude to?

Ans. I did not see any money paid to Mr. Baker or Brown, or his attorneys, that I remember of.

A. J. HANSCOME.

Adjourned 'till June 1st, 1863, at 10 o'clock a. m., by consent.

JUNE 1ST, 1863.

Met pursuant to adjournment; Redick & Briggs, for complainant, J. M. Woolworth, for def't Morton.

P. W. Hitchcock, a witness produced, sworn, & examined on part of def't, says:

Ques. 1. How long have you lived in this county?

Ans. A little over six years.

2. Were you ever connected with Roswell G. Pierce in business; if so, when & how?

(Objected to by compl't as leading & immaterial.)

Ans. I was employed by Mr. Pierce part of the time, in 1857, to look after his property here.

50 3. State whether or not in 1857 you had any conversation or conversations with Alexander H. Baker relative to his deeding his pre-emption to said Pierce?

(Objected to by compl't as leading.)

Ans. I do not remember that I ever did.

4. State whether you addressed to Baker any and, if so, what threats of violence, or otherwise, in case he did not convey his said pre-emption claim to said Pierce.

(Objected to by compl't as leading; 2d, immaterial, for the complainant never has claimed, but, on the contrary, has sworn that Mr. Hitchcock has never threatened him, to his knowledge; and further, if it should appear in the bill, as claimed that he did so threaten complainant, it is a mistake in the name & pleader.)

Ans. I never made any threats of that kind.

Cross-examination by sol's for complainant.

5. State whether you were familiar with the operations of the Claim Club in the spring and summer of 1857, and whether you were ever waited upon by that august body for any purpose; and, if so, for what.

(Objected to by def't as not proper cross-examination.)

Ans. I attended a meeting or two, and heard & saw something
51 of it; considerable. I was waited on by Jesse Lowe, Mr. Carr, and one or two others—I don't remember their names now—who claimed to represent the Claim Club. I think Jesse Lowe was acting president at that time, and the object of their visit was to persuade me to deed forty acres of my land pre-emption to Mr. Carr.

6. What do you mean by the word to persuade?

Ans. I think they meant me to understand, and I did understand, that it would be for my comfort to deed that land to Mr. Carr.

7. What did you mean by comfort?

(Objected to by def't as not proper cross-examination.)

Ans. I mean that healthy condition of my mental and physical existence which is sometimes called happiness & peace.

8. Don't you mean that, unless you made that conveyance, personal violence would be used against you by the Claim Club?

(Objected to by def't as not proper cross-examination, & calls for the opinion of the witness instead of what was said and done at the time.)

Ans. They hinted very strongly that if I didn't convey the land that would be the result.

9. Did you convey the land as requested?

(Objected to by def't, not proper cross-examination.)

52 Ans. I did.

Re-examination by def't.

10. When did this occur?

Ans. I think it was in the month of June, 1857.

Re-cross-examination.

11. Think a moment, and state whether that was not between the first & thirteenth of July, 1857.

Ans. I think it was in June.

12. Who was Pierce's agent during the summer of 1857, as generally understood, and from your own knowledge?

(Objected to by def't as not proper cross-examination, & immaterial.)

Ans. Heman Glass.

P. W. HITCHCOCK.

THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Daniel Gantt, master in chancery in & for said county of Douglas, do hereby certify that the foregoing named witnesses, Jesse Lowe, A. J. Hanscom, & P. W. Hitchcock, were by me first duly sworn to true answers make to all such questions as should be propounded to them upon the examination of this cause pending in the district court
53 of Douglas County, in chancery, wherein Alexander H. Baker is complainant and William S. T. Morton, impleaded with Roswell G. Pierce and others, are defendants, without fear, favour, or affec-

tion to either party therein, they should speak the truth, the whole truth, and nothing but the truth.

And I further certify that the foregoing depositions of said witnesses were reduced to writing by me, & was written and subscribed by said witnesses in my presence, & that the same were taken at my office in the city of Omaha, Douglas County, Nebraska, at the respective dates therein mentioned.

Witness my hand this first day of June, A. D. 1863.

DAN. GANTT,
Master in Chancery.

And thereupon afterwards, to wit, on the 9th day of November, A. D. 1863, there was filed in the office of the clerk and register of said court certain depositions; which said depositions were in the words and figures following, to wit:

Depositions taken in an action pending in the district court, in
54 chancery, of Douglas County, in the Territory of Nebraska, wherein Alexander H. Baker is complainant, and Roswell G. Pierce & others are defendants.

And for the said complainant, in pursuance of the notice hereto attached, no one appeared; and for the defendants appeared—which depositions were taken at Attica, in the county of Wyoming, & State of New York, on the 30th day of October, in the year 1863—

John N. Smith, of Janesville, in the State of Wisconsin, but now residing temporarily in the said town of Attica, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

First. To the first interrogatory he says: My name is John N. Smith; am 43 years of age, & by occupation a broker; & my place of residence is Janesville, and State of Wisconsin.

Second. To the second interrogatory he says: I know Alexander H. Baker, the complainant in this action, & Roswell G. Pierce, one of the defendants therein; have known Roswell G. Pierce since the winter of 1856 & 1857; have known Alexander H. Baker eighteen years or
55 more; am not personally acquainted with any other of the defendants.

Third. To the third interrogatory he says: I was in the Territory of Nebraska from about the middle of June, 1857, to the 19th day of September, 1857, during which time lived with the complainant, Alexander H. Baker, near Omaha.

Fourth. To the fourth interrogatory he says: I know of Alexander H. Baker deeding a quarter of section of land which he pre-empted, and on which he lived in section 7, town. 15, range 13 east, near Omaha, about the middle of August, 1857, without any consideration or equivalent therefor; that he was compelled, through fear by threats made by Roswell G. Pierce and other members of the Claim Club, to deed the same to said Pierce.

Fifth. To the fifth interrogatory he says: Jonas Seely, one of the attorneys of R. G. Pierce, made threats that if Baker did not deed the land, the Claim Club would take the matter in hand and compel him to do it, or he should leave the country. They visited Baker's house several times; threatened to have a meeting of the Claim Club. Baker refused to deed the land until a public meeting was called and no-
56 tice given. Through the advice of counsel, and that he might re-

main a citizen of the Territory, he deeded the land on the day previous to the one on which the said meeting was called, understanding, by being so advised by his counsel, that a deed given under those circumstances was not valid, and he did not consider it so when he gave it, his counsel advising him that a deed obtained by force or threats would be good for nothing. My means of knowledge was that I lived with him and transacted the business for him, and that the threats were made in my presence, and I heard them.

Sixth. To the sixth interrogatory he says: The Omaha Claim Club was in existence when I went to Nebraska, and was also in existence when I left; I do not know when it was organized. The object of the organization was for the mutual benefit of its members. It was feared by nearly every one. Any person incurring the displeasure of it or any of its members was in danger of being obliged to leave the county to save his life, unless he acceded to their terms; and there were instances, as it was said, where they had to pay the penalty by their
57 lives. Such being the threats of Jonas Seely & Roswell G. Pierce that the plaintiff conveyed the land through fear as state in the answer to interrogatory 5.

Seventh and last interrogatory. To the seventh and last interrogatory he says: Said Baker never made any negotiation or settlement with said Pierce in any manner or way whatever about said nursery, whereby said Baker was to recover any equivalent in any form. Said Baker never owned or had any interest in said nursery. I made an arrangement with Roswell G. Pierce, in New York City, in the winter of 1856 and 1857, whereby Roswell G. Pierce agreed to lease to me one hundred acres of land near Omaha City for the term of ten years from the first day of April, 1857. The land was to be broken and fenced with a good and substantial fence; 25 acres was to be put in order for receiving trees by the first day of April, 1857, and the remainder to be broken up during that spring of 1857. Said Pierce failing to have the land fitted in time according to said agreement, I suffered very heavy damages
58 thereby, losing about one hundred thousand trees. Said Pierce refusing to carry into effect said agreement for 10 years, a compromise was agreed upon for 6 years, he paying to me the difference. I had engaged said Baker to superintend and take charge of said nursery for me, and when the lease was finally executed I had it made running directly to him, he having no interest in the trees or lease except to superintend it and take his pay therefor. Hanscom & Seely were his, R. G. Pierce's, attorneys, who acted for him in the said transaction.

I know of no other matter or thing material to the subject of the examination.

JOHN N. SMITH.

I, Moulton Farnham, a justice of the peace within and for the county of Wyoming, in the State of New York, do hereby certify that the above-named John N. Smith was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions by him subscribed was reduced to writing by me, and by
59 said witness was subscribed in my presence, and was taken on this thirteenth day of October, in the year 1863, and I have no official seal.

MOULTON FARNHAM,
Commissioner & Justice of the Peace.

STATE OF NEW YORK,
Wyoming County, Clerk's Office, ss:

I, Charles W. Bailey, clerk of the said county of Wyoming, & also clerk of the supreme court in & for said county, which court is a court of record, do hereby certify that Moulton Farnham, esq., before whome the foregoing depositions was taken, was, at the time of taking the same, a justice of the peace in and for said county, duly authorized to take depositions and to administer oaths; that I am well acquainted with his handwriting, and verily believe that the signature to the foregoing certificate is his genuine signature.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and said court this 31st day of October, A. D. 1863.

CHA'S W. BAILEY, *Clerk.*

[SEAL.]

[U. S. I. R. 5c.]

60 And thereupon afterwards, to wit, on the 24th day of November, A. D. 1'63, there was filed in the office of the clerk and register certain interrogatories to be propounded to Roswell G. Pierce; which said interrogatories are in the words and figures following, to wit:

Interrogatories to be propounded to Roswell G. Pierce, a witness to be produced, sworn, and examined on the behalf of the complainant, under and in virtue of the commission hereto annexed.

First interrogatory. What is your name, occupation, & residence?

Second interrogatory. Do you know Alexander H. Baker or W'm S. T. Morton, or either of them; if so, how long have you known them respectively?

Third interrogatory. Are you acquainted with, and had you ever any interest in, the south quarter of section eight in township fifteen
61 north, range thirteen east, in Douglas County, Nebraska? If you had any interest, what was the nature thereof, and how was it acquired?

Fourth interrogatory. Did you ever pay to the aforesaid Baker, or to any one for him, any consideration for deeding said [said] land to you; if so, when, where, & to whom, and what did you pay the same?

Fifth interrogatory. Did you ever have any conversation or conversations with said Baker in reference to said land and to his pre-empting the same & to his deeding the same to you; if so, when, where, in whose presence was each of such conversations had, & what was said on each side at the same?

Last interrogatory. If you know any other matter or thing relating to the matter in controversy in this cause, declare the same as fully as if the same were particularly enquired after.

And thereupon afterwards, to wit, on the 4th day of December, A. D. 1863, there issued out of the office of the clerk and register of said court a commission to take depositions directed to Calvin C. Woolworth; which said commission cannot now be found among the files of this court.

62 And thereupon afterwards, to wit, on the 14th day of March, A. D. 1864, there was filed in the office of the clerk and register of said court certain depositions; which said depositions are in the words and figures following, to wit:

District court of Douglas County, in chancery.

ALEXANDER H. BAKER
vs.
WILLIAM S. T. MORTON, IMPLEADED WITH Roswell G. Pierce and others.

Depositions of witnesses taken in a certain cause pending in the district court of Douglas County, in chancery, wherein Alexander H. Baker is complainant and William S. T. Morton, impleaded with Roswell G. Pierce & others, defendants, taken in pursuance of an order of reference directed to the undersigned, master in chancery, made by the above-named court, bearing the date of

Upon notice served by complainant's solicitors upon defendant's Morton's solicitor, parties met at my office, on the 25th day of May, A. D. 1863, and by consent adjourned till 30th day May, 1863, at 10 o'clock a. m.

SATURDAY, *May 30th*, 1863.

63 Parties and their solicitors met pursuant to agreement. Redick & Briggs appeared for complainant; J. M. Woolworth appears for def't Morton.

Alexander H. Baker, a witness produced, sworn, and examined on part of complainant, says:

Ques. 1. Are you the complainant in this suit; and what is your age and occupation and place of residence?

Ans. I am the complainant; my age is forty years; occupation, farmer; residence, Douglas County, Nebraska Territory.

2. Did you ever convey any land on section eight, in Douglas County, to one Roswell G. Pierce? and, if so, state how much, and the circumstances under which you conveyed it. State fully all the circumstances connected therewith.

(Objected by the defendant on the ground that the question is leading and does not call for the best evidence. Question waived by complainant's sol.)

3d. State whether or not you ever conveyed to any one, and, if so, to whom, land on section No. eight in township fifteen north, of range thirteen east, in Douglas County, Nebraska Territory; and, if so, how much land, and the circumstances under which such conveyance was made, and all about it.

64 (Objected to by the defendants' sol. on the ground that the question does not call for the best evidence.)

Ans. I did convey land on section eight, southwest quarter, to Roswell G. Pierce; it was in township fifteen north, of range thirteen east; it was one hundred and sixty acres. I pre-empted that on tenth August, 1857. Roswell G. Pierce claimed to own the original claim and wished me to deed the land to him. I refused to do it. He then said he would use the Claim Club, and force me to do it. He also stated at that time that he had plenty of money, and by the help of his friends and the Claim Club, he would have the land at all hazards. He then stated that the register and receiver of the land office were his personal friends. He said that many of the leading members of the Claim Club were his friends, and mentioned Col. Hanscom, and, I think, Jonas Seeley, and Poppleton, as being in his employ, and Thomas B. Cummings, he said,

was a particular friend of his and had agreed to aid him in procuring a title to all of these lands; that is the way he under it, that the Claim Club was then protecting for him. That conversation took place
65 about the 5th of August, 1857. A day or two after that I had another conversation with him, and it was about the same; the last conversation was at my house. He said that he had invested a good deal of money here in these claims, and that if I thought I was going to get any of the land, I would find myself mistaken, for the reason that he had the means to carry it through; that the most influential in town were working for him, or in his employ.

4th. What did he say, if anything, in regard to having issued hand-bills and taking the necessary steps to call the Claim Club together?

(Objected by def't as leading.)

Ans. He said he should take the necessary steps to call the Claim Club out, and he would have them after me within two days, unless I pre-empted the land, deed it to him, or withdraw my fileing and moved off from it.

5th. When did he next threaten you, if at all, after you pre-empted the land, and what were those threats, and who was present, just before you conveyed?

(Objected to by def't as leading.)

Ans. After I pre-empted the land, I saw Mr. Pierce in Glass'
66 office. He then said to me, "You think you have got that land, but the Claim Club or the president of the Claim Club has been notified to call the club out in your case." I believe that is the only conversation I had with Pierce at that time.

6. State whether Pierce had any agents or confederates with him to enforce you to convey the land to him; and, if so, who were those confederates; and whether they, in connexion with Pierce, threatened you, unless you conveyed said land to Pierce; and what did they do, and all about it?

(Objected to by def't as being leading.)

Ans. He had agents here. Heman Glass came out to my house on, I think, the 7th of August, 1859. He asked me what I was going to do about that land. I said to him I expected to pre-empt and hold it. He said I never would be allowed to do, for his uncle Roswell had came out for the express purpose of taking care of these claim-jumpers, & that he had got the money & the friends to bulge it through, and if I did not withdraw my fileing, or pre-empt the land and deed it to Mr. Pierce, that they would serve me as the had served lots of others; that is, throw me in the Missouri River.

67 7th. Were there any other threats made by him, Glass, after you had pre-empted; and, if so, what were they, just before you conveyed, & what did he say about hand-bills having been issued to call the club together?

(Objected to by def't as leading and immaterial & leading.)

Ans. I saw Mr. Glass on the day I pre-empted, in front of the Pioneer Block. He said Mr. Pierce had notified the president of the Claim Club, and that there was a meeting called to meet that afternoon in my case, and that the best thing I could do for my own safety was to deed the land to Pierce.

8th. How do you know Glass was the agent of Pierce in that matter, and what did Pierce tell you in relation to Glass' agency for him?

Ans. Mr. Pierce told me at different times that Glass was his agent in the matter at that time, and Glass likewise told me so.

9th. Were you acquainted with the operations of the Claim Club at

that time, and before, and about how many men could he raise in short notice to enforce their rules and put in execution their laws, in your opinion ?

68 (Objected to by def't on ground that it is leading and calls for the opinion of the witness, and does not appear that any such club existed.)

Question waived.)

10th. Were you acquainted with the operations of the Claim Club, so called ; and was or was it not in full blast at that time, and about how many persons comprised it, and what was the organization of the club used for ; & do you know of any of their threats being put in execution about that time ?

(Objected to by def't on the ground that it is leading, and does not appear that any such club existed, and is immaterial.)

Ans. I was acquainted with its operations ; and that they did put their threats in execution and carried them out ; that was my understanding. I was not a member of the club ; so as my knowledge went, those pre-empting stood in fear of the Claim Club. It was my understanding at the time that the club was in full force, I should judge a hundred & fifty persons comprised it ; it was used to put people of from claims.

11th. About how many men of the club could have been called

69 together, in your opinion, on short notice, about the time you conveyed to Pierce to inforce their rules ?

(Objected to by def't on ground that it is leading, and calls for opinion of witness.)

Ans. In my opinion they could have called out one hundred men.

12th. State who were members of the club, among leading men, at that time ; I mean what officers in the Territory at that time, among others.

Ans. The secretary of the Teritrory, the sheriff of Douglas County, the mayor of the city of Omaha, and the register & receiver of the land office, as I understood it. Mr. Glass told me that he was a member of the club.

13th. Please state why you conveyed that land to Pierce, and whether you received any consideration for so conveying ; and if , what considerations.

(Object. to by def't on the ground that it does not appear that he ever did convey to Pierce.)

Ans. I conveyed from fear of personal violence ; I never received any consideration whatever.

14th. State what steps you took, if any, just before making the conveyance to defend against it.

70 Ans. I consulted my attorney just before making the conveyance as to what would be the probable result of contenting against that Claim Club. He stated to me that it was dangerous fighting them, and that a conveyance under those circumstances would not be good for anything, and that, perhaps, to avoid the Claim Club and personal violence from them, I had better deed the land over to Pierce, which I did.

(Def'ts' sol. objected to all conversations had between witness and his att'y, as detailed in last above answer.)

Cross-examination by def't Morton.

15. When did you first come to this Territory ?

(Objected to by comp't's sol. as not proper cross-examination.)

Ans. I first came here in December, 1856, myself.

16. How long have you known Pierce, and where did you know him first?

(Objected by complainant as not proper cross-examination.)

Ans. I have known Mr. Pierce nearly six years; I first knew him personally in Omaha.

17. When did you first go on this land to settle?

(Objected to by complainant as not proper cross-examination, and immaterial.)

71 Ans. I went on this land the first day of May, 1857.

18. Did you talk with Glass about going on it before doing so?

(Objected by complainant as not proper cross-examination.)

Ans. I have no recollection of having any conversation with Mr. Glass about going on to that piece of land.

19. Did you know at the time that Pierce claimed it?

(Objected by comp't as not proper cross-examination.)

Ans. I did not know of my personal knowledge Pierce claimed that land.

20. Had you any knowledge on the subject?

(Objected to by comp't as not proper cross-examination, and immaterial.)

Ans. I had knowledge from report that the Claim Club wase protecting him about eleven hundred acres in that section of country; I did know it included this.

21. Who was the counsel to whom you have referred?

Ans. Harris & Redick.

22. Which one of them was it that you consulted with at the time you have spoken of?

72 Ans. My recollection is I consulted them both at that time.

23. You state in your examination-in-chief that before conveying you consulted your att'y as to the result of defending against the club at that particular time; do you mean to be understood that you consulted both of the firm or only one?

Ans. I mean to be understood that I consulted them both; they were both present.

24. Who was the president of the club at this time?

Ans. My understanding was that it was Joseph Baker.

25. From whom did you derive that understanding?

Ans. From Mr. Glass.

26. Who were the other officers of the club?

Ans. I don't know who they were, except I understood that Jesse Lowe had some office in the club.

27. When did Pierce first threaten you?

Ans. I think the first threat Pierce ever made to me personally was on or about the fifth of August.

28. When did Glass first threaten you?

73 Ans. It was about the second of [of] August; on reflection, it was in July.

29. Where did Pierce first threaten you?

Ans. It was in my nursery, where I was at work; not on this tract of land, but over adjoining it.

30. Who was present at that time?

Ans. My hired man & John W. Brown.

31. Where did Glass first threaten you?

Ans. It was at the house where I lived; on the land in dispute.

32. Who was present?

Ans. I think there was no one present at that time.

33. Had you ever any negociation, or had any for you, with Pierce, or any one acting for him, looking to a settlement of these difficulties?

Ans. Not to my knowledge.

34. What did you say to Pierce at the time he first threatened you? (Objected to by comp't as not proper cross-examination.)

Ans. I think I said him that I had a legal right to that land, and should have it if I could get it.

35. What did you say to Glass when he first threatened you?

Ans. I said to Glass he had pitch in, that I meant to have the land if I could get it.

74 36. What did you say to Pierce at the second time he threatened you, and where was it he so threatened you the second time, and who was present?

(Objected to by pl'ff as not proper cross-examination.)

Ans. I said to Pierce that I had not changed my views since the previous conversation, and that I should hold the land. That conversation, I think, was at my house. Brown was present, the one I referred to before.

37. Where was it, and when, & who was present, & what was said, at the time Pierce threatened you the third time?

Ans. I think it was in Glass' office, the State House. My recollection is that it was on the tenth of August, 1857, after I proved up. My recollection is Mr. Glass was present; don't remember of any one else being there. I think he said, "You have got that land; I will show you you can't keep it." He stated he had notified the president of the club to have a meeting that afternoon; that he would have them after me within twenty-four hours. I know I thought it was pretty short notice. I don't recollect that I made any reply.

75 38. When, where, and in whose presence was it that Glass threatened you the second time, and what did you say to him in reply to such threats?

Ans. I think it was about the second of August that Glass threatened me; that was at the nursery where I was at work, in the presence of John A. Brown, I think I said. I said to him, about that time, that I did not want any further conversation with him in relation to that land, for I intended to have it.

39. When, where, & in whose presence did he threaten you the third time, and what did you say to him?

Ans. I think it was on about the 7th August, on the street in front of the Pioneer Block. There was no one present at that time. I said to him, at that time, that I thought I had a good of the rope, and that I calculated to hang on to it as long as I could.

40. When did he threaten you again, if at all, and where and who was present, and what was said by you?

76 Ans. My recollection is that it was on the day I pre-empted. I think in his office. I think Mr. Pierce was not present at that time; there was no one present but Mr. Glass and myself; don't recollect that I made any reply.

41. State when, if at all, he threatened you again, where it was, and who was present, and what you said.

Ans. I don't recollect that he made me any threat after that.

42. Have you stated now all the occasions when you were threatened, the persons present at the same, and all that was said on both sides?

(Objected to by comp't on the ground that it seeks to mislead the

witness in this, that the counsel asked the witness only what he said in reply to threats, without asking all the party said witness; and on the ground that the witness has not attempted to detail all that was said to him, or the number of times particularly when the threats were made.)

Ans. From my recollections, I have stated most of the times when threats were made to me personally. I have stated all persons present, except John N. Smith was at one time. I have stated the sub-
77 stance of what was said, according to my best recollections I have.

43. Did one Hitchcock ever make any threats to you of this character? If so, when, where, in whose presence, and what was said by him and by you at the time?

Ans. I don't recollect that he did.

44. Did you ever have any conversation with either Pierce or Glass about making the deed, after the same was made? If so, when, where, and what was said on both sides?

(Objected to by comp't on the ground that it is not proper cross-examination.)

Ans. I never had any conversation with them about it.

45. You speak of your nursery; where was it?

(Objected to by comp't as not proper cross-examination.)

Ans. A part of it is on the pre-emption of Grey and Swift; the balance on Mrs. Seal's.

46. Had you advised with Harris & Redick before your last conversation with Pierce, that being, as I understand, the conversation in Glass' office?

Ans. I had advised with them on other matters, but not on this particular matter at that time.

47. Where did you live in the fall of 1857?

(Objected to by comp't as not proper cross-examination & immaterial.)

78 Ans. I lived on the lands I pre-empted.

48. Have you any personal knowledge of the alledged Claim Club ever committing violence upon any person?

(Objected to by comp't as not proper cross-examination & immaterial.)

Ans. I had no personal knowledge, but the knowledge I obtained was from general report.

49. Had you determined what you would do with reference to deeding over to Pierce before you had advised with Harris & Redick, or did you do so by reasons suggested by them?

(Objected to by comp't as not proper cross-examination.)

Ans. I did so from the reasons suggested by them.

50. Did you know, from your own knowledge, whether any bills were put up or circulated, calling the club together?

Ans. I did not see the bills, but I was told by persons, who said they were members of the club, that such bills were put up & circulated.

51. Did you ever do any work for Pierce? If so, when, what was it, & how did he pay and compensate you for it?

(Objected to by comp't as not proper cross-examination & immaterial.)

Ans. I did some breaking for Mr. Pierce in the summer of 1857.
79 He employed me to do it on the land pre-empted by George Swift & Mrs. Seal. He agreed to pay me five dollars per acre for breaking it. He paid me some money, or rather his agent, Glass, paid me some money, and left a balance due of two hundred dollars. I obtained

a note from Pierce, I think in the summer of 1859, for that balance. After that, I think in the spring of 1861, I traded that note to Mr. Glass for a horse.

52. Is this land situate in the city of Omaha?

(Objected by comp't on the ground it is seeking to enlarge the city of Omaha four miles.)

Ans. It is not.

How far are the pre-emptions of Swift & Mrs. Seal from the land in question in this cause?

Ans. The land that Swift pre-empted, one eighty acres of it adjoins, and the Swift pre-emption lays between this land & Mrs. Seal's.

Re-examination by complainant.

53. You say, in answer to question No. 48, that you have no personal knowledge of violence having been done to any one by the Claim Club. I will ask you if you do not remember the case of Callahan, who was thrown into the Missouri River, and almost drowned; and the case of Jacob Shull, who was chased through the streets with bayonets,
80 as two instances, in the spring of 1857?

(Objected to by def't as leading & immaterial.)

Ans. I recollect the circumstances of those two cases from report by parties who saw them. I was not present myself.

54. Was it not the general understanding, at that time, that every man should have a right to hold three hundred & twenty acres of land upon the domain, and that that right was guaranteed and enforced rigidly by the Claim Club; and was not that Claim Club a terror in the community to all those who attempted to jump or take any of the claims so held by others; and was not all or great portion of the land in the neighborhood held in that way untill the summer of 1857?

(Objected to by def't as leading & immaterial.)

Ans. From the best of my knowledge, that was the general understanding. It was my understanding that that right was guaranteed and maintained by the Claim Club. The club was such terror, to my personal knowledge. The greater portion of the land was so held until entered.

55. On the day that you made this conveyance, & at the time the rumor was that the club was being convened, was you not advised
81 by other personal friends, aside from your counsel, on the streets of Omaha, to convey the land to Pierce, to save your life? State who they were, if you remember.

(Objected to by def't as being leading, not proper re-examination, & immaterial.)

Ans. On the day I pre-empted I talked with Mr. O. P. Ingles & J. W. Paddock in relation to deeding this land; they both advised me that I had better deed the land to Pierce and save myself trouble; that there was no use in trying to resist the Claim Club.

56. Do you believe to-day had you not conveyed that land your life would have been spared by that club?

(Objected to by def't as leading & immaterial.)

Ans. I did not believe it at the time I made the deed. The pre-emption and deed were made the same day.

57. And was there any other reason other than fear that induced you to make that deed at that time?

Ans. The only reason that I made the deed was through fear of personal violence.

(Def't objected to last question (57) on the ground that it is leading. Complainant denied def't's right to object after answer given.)

82 58. What was the land considered to be worth at the time you made the conveyance?

(Question waived.)

59. Were you not advised on the day you deeded, & did you not consult with others besides Paddock & Ingles, in regard to your safety and best course in this difficulty, and, among others, did you not consult Messrs. Gardners?

(Objected to as leading & immaterial.)

Ans. I consulted my brother-in-law John M. Smith, and with Charles Gardner; that is all, I think.

60. You state, in answer to question 42, that you have stated most of the times when threats were made by Pierce and his agent, unless you conveyed this land to Pierce, as by you before stated. Will you now state whether you were not threatened by these parties, at varius times and in varius ways aside from those mentioned, between the last of July and time of deeding?

(Objected to by def't as leading.)

Ans. I met Glass often between last of July and time of deeding the land, and he was every time I met him at me about deeding the land to Pierce.

83 61. What did he tell you about his uncle Roswell coming here, and if you did not fix it up before he would come what he & the Claim Club would do?

(Objected to by def't as leading, not proper re-examination, & contradictory to what the witness had allready testified.)

Ans. He told me on several occasions that his uncle would be here in a few days, & that if this matter was not fixed up before he come that I would see a good deal of trouble.

Re-cross-examined.

62. When & where did Glass tell you these things first, & who was present at the time?

Ans. I don't recollect the precise spot or time, but in our conversation frequently when I saw him he was throwing out that kind of threats.

63. I understand you, then, that these were casual conversations arising accidentally as you met, as was not threats made quite so formally and directly as those to which you have heretofore testified. Am I right in this?

Ans. I understand them to be threats to induce me to leave the claim or deed it to Pierce; they perhaps were not made quite so rough as they were after Pierce came.

84 64. How did it happen that when all the occasions on which Glass threatened you were enquired after by me you failed to mention the threats stated by you in your re-examination; was it not because you did not consider them as having an important bearing in this controversy?

(Objected to by comp't because it seeks to mislead the witness in this, that he does not state that those enquired of by the counsel were all that were made, but witness stated that they were most of the times; and the latter part of the question is immaterial.)

Ans. The reason for my not stating them was from the fact that I did not recollect at the time. Glass commenced with me in relation to this land, some in the month of June, & he kept it up until the thing was

closed up, on the 10th of August, every time he saw, & was frequently out at my house.

A. H. BAKER.

By consent adjourned until June first, 1863, at 10 o'clock a. m.

85 Augustus Macon, a witness produced, sworn, and examined on part of complainant, says:

Ques. 1. What is your age, occupation, and place of residence, & how long have you resided there.

Ans. My age, 30 years; my occupation, att'y at law; place of residence is at Omaha for the last seven years.

2. Was you familiar with what was known as the Omaha Claim Club and with its operations? &, if so, state, if you know, about when it commenced & was organized, & how long it continued in full force in the city of Omaha, & about how many could be mustered out in short notice by it, the extent of its force & terror, in your opinion, & your means of knowledge, & all about it.

(Objected to by def't as leading.)

Ans. I was familiar with the Omaha Claim Club from some time in the summer of 1856 until it ceased to have any existence, late in the fall of 1857. I can't say when it was organized. I think it continued in full force up to late in the fall or early in the winter of 1857. I suppose about from fifty to one hundred in an hour's notice could be
86 mustered. The extent of it, I suppose, was equal to fifty or a hundred men, armed, against one. My means of knowledge is this: I was a member, and participated in their meetings, & at one time late in June, 1857, I came in conflict with the Claim Club; again on the 25 day of , 1857, I was employed by Bovay & Harbach to get some men who had pre-empted a piece of land, to get the men away from the Claim Club. I found a good deal difficulty & opposition in doing it, although they were on the Iowa side. Four of the members of the Claim Club had one of the men in charge, & had brought him by force, all of them being armed with revolvers. I met them about half-way between Council Bluff and Omaha, & told them my business, & informed the man that I was there for the purpose of getting the men away from those men, & that he was held without authority of the law. In reply to me they said that if I interfered they would shoot me. The man they had in charge was so frightened that for some time he dared not say he desired to go back. I afterwards [I] persuaded the whole crowd to go back to Council Bluffs, & managed, in the bustle of a crowd, to get the man to the back-door of a hotel; he succeeded in getting into the
87 woods from them. Mr. Bovey & Harbach sent me fifty dollars that night to send him off on the stage to Illinois. This 25th August, 1857, I was threatened by the members of the Claim Club that they would call a meeting & have me put across the river for assisting in getting these men away. A few days afterwards they held a meeting, and I, to avoid difficulty & expense of hireing men to assist me, went over to Council Bluffs & stayed four or five days. This was about 6th or 10th of September, 1857. I learned that at the meeting that was held that they had made violent threats against me, but that the meeting took no action on it.

3. What was the general understanding in this community about that time as to the certainty and determination with which this club enforced its laws? And state whether you considered any claim-jumper's life safe about that time; and whether you know of instances of the most

cruell character having been committed by the club in this vicinity, Florence, and elsewhere.

Ans. I believe it was generally understood when any one transgressed their laws by jumping claims he was to give up the land immediately, or he should suffer such penalty as they would impose. I did
88 not consider any claim-jumper's life about that time. I have known of persons being put in the river in the month of February or March, several times, and were forced to withdraw filings they had made. I have known of houses being burned down, men driven from the land, and men being put across the river. I know nothing, personally, about Florence.

Cross-examination by def't.

4. How many men were they who had pre-empted for Bovey & Harbach, and that you were employed to get away?

Ans. Two.

5. Who were they?

Ans. John Clark, and the other man's name was Gallager.

6. Where did they live?

Ans. I understood from Bovey they lived here in town; I don't know myself.

7. Do you know where Gallagher lives now? If so, state.

Ans. I do not.

8. Do you know where he has lived since the time you have spoken of?

Ans. Not this Gallagher.

9. Have you ever had any knowledge of his whereabouts since this occasion?

Ans. I don't remember that I ever had.

89 10. What land was it they had pre-empted?

Ans. Land in this county; but I could not describe it.

11. State as near as you are able to in what part of the county it lay.

Ans. I it laid in the eastern part of the county, a few miles north of Omaha.

12. Who were the four persons who brought them from Glenwood?

Ans. The four persons who brought Church, as I think, was James Creighton, & his cousin Creighton, & I think John Creighton, and an other man whom I don't remember. William Young Brown had the other man in charge, & he had three or four men with him, & perhaps more; but how he got away I don't remember. I know I had something to do with getting him away.

13. How long before this had you been employed by Bovey & Harbach in reference to these matters?

Ans. I was employed by them on 25th of August, after the pre-emption had been made, and in the afternoon.

14. On what day did they move up?

Ans. I couldn't say; but I think a few days previous to the 25th day of August.

15. Who claimed the land against them?

(Objected to by complainant as not proper cross-examination.)

90 Ans. I think the Creightons claimed a portion of it; and either William Young Brown or the Saratoga Spring Land Company, a portion of it.

16. Was the Claim Club as efficient in the fall as it was in the spring of 1857?

Ans. Late in the fall I do not think it was; but in beginning of fall, or late in the summer, I would consider it as efficient.

17. When did the land office at this place open for pre-emptions?

Ans. I think some time in February or March, 1857. I will change & say March or April; but I am not very sure.

18. When was the large proportion or considerable portion of the pre-emption rights in this vicinity proved up?

(Objected to by the pl'ff as not proper cross-examination, & immaterial.)

Ans. I presume that the greater portion were made from the time the office was opened for pre-emption until the middle of the fall of 1857.

19. Do you not remember that many complaints were made against Hanscome, Poppleton, and others, because after they had proved up they withdrew from the club?

(Objected to by comp't, because not proper cross-examination & immaterial.)

91 Ans. I never heard any.

20. Did they continue in the club, taking part in its proceedings & measures while it continued efficient?

(Objected to by comp't, because not proper cross-examination.)

Ans. I couldn't say, for the reason I never was in their meetings but once or twice after my difficulty with them in June.

21. Did they take any action part in it at that time?

(Objected to by comp't as not proper cross-examination.)

Ans. I think they did; Hanscom made a speech. Poppleton was the attorney against me, and Seely was att'y for me in the matter. The acting governor was there, and took part in the meeting also. Doctor Miller was one of the referees in the matter.

22. Who were the men you have known to have been put in the river?

Ans. An Irishman by the name of Callahan, and another Irishman that filed on Governor Cummings' claim; I don't now remember his name.

23. What house have you known to have been burned down?

92 Ans. One built by Jacob Shull; that is all I saw burnt. I saw one torn down, and the man was put across the river.

24. When did these occurrencies take place?

Ans. The first one, tearing down the house, was in 1856; the burning down of the house was in February or March, 1857.

25. What other men have you known to have been put across the river?

Ans. I don't know of my own knowledge of any others.

26. What other men do you know to have been driven from their lands?

Ans. George Smith, James Taggat. One man by name of William Jones, I think, was another; that is about all I know, of my own knowledge.

27. When wase these men so driven from their lands; & what violence was used, if any?

Ans. Smith, in 1856; Taggat, in 1857; & Jones, in 1857, in the early part. The person violence used against Smith was, that his house was entirely thrown down, and threats made against his life of such a character that I, as one of his attorneys, advised him not to go upon his until late in the fall of 1857. Threats were the only violence used against the others, so far as I know. I acted as the att'y for Taggat also.

93 28. Did you know of any other cases in which personal violence was used against any person; if so, who were such persons, and when?

Ans. No one except myself; late in June or first of July, 1857, the

Claim Club held a meeting, and sent down four members armed to arrest me and bring me before the Claim Club for alledged breach of the claim regulations.

29. State if it was not the practice of the club to give a man a hearing or trial before proceeding against him.

Ans. I will state that it was partially so; but not a legal trial, a trial according to their rules and regulations; but not a trial according to any law governing the occupation of any public lands.

Re-examination.

30. What kind of arms did these four men carry you speak of as arresting you? Also state whether or not the club when they sought to enforce these rules & regulations, were armed; and, if so, in what manner?

Ans. They carried revolvers when they came to arrest me; they were, when they sought to enforce any decree or decision, [they were,] armed sometimes with revolvers & sometimes with muskets.

94 *Re-cross-examination.*

31. When last, & in whose case, did you see them armed with muskets?

Ans. I never saw them armed with muskets but once; it was in March or April, 1857, in case of Shull and some Dutchman.

AUGUSTUS MACON.

Allen Root, a witness produced, sworn, & examined on part of complainant, says:

Ques. 1. What is your age, occupation, and place of residence?

Ans. My age is 35 years; occupation, farmer; & place of residence is Omaha, Douglas County, Neb., since May, 1855.

2. Were you a member of the Omaha Claim Club, and familiar with its operations in the summer of 1857?

Ans. I was with most of its operations.

3. How long did it keep up its operations; how long was it in full force in this vicinity, & in the habit of calling meetings, & inforcings its rules and regulation?

Ans. It was in full operation in the forepart of the summer of 1857; kept up regular meetings until some time in May or June, & there were meetings occasionally, when necessity required, until July
95 or August, & may have been later.

4. Don't you remember of attending or knowing of quite an exciting meeting of the club in which Joseph Baker was a party, along in September or October, 1857, and George W. Brown was a party?

(Objected to by def't as leading.)

Ans. I recollect the circumstance of the meeting being quite full; my best recollections of it is that was in August.

5. State if you recollect any excited meeting of the club, at which there was a full attendance, in the month of August or September; and, if so, state about what sort of a meeting it was as to size & force, & the parties interested in it.

(Objected to by def't as leading, & because the counsel states that question is asked with a reference to the meeting as to which he has already enquired, informing the witness of the nature of the answer he desires.

Here counsel of complainant objected to that objection because it is false.

Here defendants' counsel ask master to enter as stated by counsel for complainant, "That the question was perhaps objectionable, as in the objection stated, & he would put the question in another form
96 that would perhaps suit, and the complainant's counsel consents to such entry.)

Ans. In the month of September or August there was a meeting that was somewhat more exciting than usual at the trial of the case between Baker & Barnes. There was another in June of an exciting character, in which Macon was tried. It was quite a large meeting at Baker's trial, probably from seventy-five to one hundred men present.

Cross-examination by def't.

6. How early in the year 1857 was the considerable proportion of the pre-emption rights in this vicinity proved up?

(Objected to by comp't as not proper cross-examination & immaterial.)

Ans. So far as I know it was in the spring or in the forepart of the summer.

7. Was not the meeting you have spoken of as held in August more an amicable one, and in the nature of an arbitration, than of a violent proceeding of such club when in their vigor?

(Objected to by complainant as not proper cross-examination & leading.)

Ans. It was very much like a meeting, the first meeting, to settle disputes between claimants before the club, and not in the character of dismissing or ejecting a claimant.

97 8. Was the club as efficient for violent measures in the fall as in the spring of 1857?

Ans. I do not think it was.

9. Was it as efficient in such manner in the month of August as in February, March, & April?

(Objected to by complainant as not proper cross-examination & leading.)

Ans. No; I do not think it was.

ALLEN ROOT.

JUNE THE 6TH, 1863.

The examination in the foregoing case had on notice served by complainant on defendant's solicitor.

O. P. Ingles, a witness produced, sworn, & examined on part of complainant, says:

Ques. 1 Please state your age & place of residence, & how long you have resided there.

Ans. My age is 41 years, and place of residence in Omaha, & have resided there about eight years.

2. What do you know, if anything, of the Omaha Claim Club, so called, in the year 1857? &, if you should answer you are acquainted with its operations, then state what was the object of that or-
98 ganization, the extent of its powers, as near as you can say, in the month of August & September, 1857.

Ans. I had some knowledge of it; I was a member of it. The object, as I under it, was to prevent a system of land-stealing; that

was what we called it. The extent of its powers, so far as it came under my observation, was to remove men & buildings from claims.

3. Do you recollect the circumstances of Alexander Baker and a man by name of John W. Brown pre-empting or about pre-empting land near Omaha, claimed by one Pierce? and, if so, state what your knowledge is of that affair in August, 1857.

(Defendant objects to so much of the question as relates to Brown as immaterial & irrelevant.)

Ans. I recollect having a conversation with Mr. Baker about the time, I think the very day, he pre-empted.

4. What do you know in regard to the claim-club, if anything, threatening Mr. Baker on that day? & please state all about it.

Answer. I know nothing of the Claim Club threatening Mr. Baker in particular on that day; I told Mr. Baker I would not want to
99 take the chances of this Claim Club; it was taking some risk.

(Def't objects to all that part of the answer as stating conversation with Mr. Baker, on the ground that it is hearsay evidence, & not responsive to the question.)

5. How did you come to state what you now state you narrated to Mr. Baker?

(Objected to by def't as immaterial and calling for hearsay testimony.)

Ans. This was in answer to his asking my opinion about the matter in reference to his pre-empting the land.

6. How did he come to go to you to advise with you as to whether it would be safe not to pre-empt and deed this land over to Pierce?

(Objected to as immaterial by def't.)

Ans. I don't know, unless he thought I was a member of the club.

7. What he say to you, and what did you state in reply? State as nearly as you can recollect, & state what condition was he in, whether very much excited or otherwise.

(Objected to by def't as immaterial, calls for hearsay testimony, & leading.)

Ans. I couldn't state exactly the words he used; the amount
100 of it was that he wanted to know what the power of the club was; I told him I wouldn't want to take the chances; I think he was a little excited all the time.

8. State how long you had been a member of the club, & whether you had been in the habit of acting with the committees to wait these land-stealers, so called, and whether or not you did not state to Mr. Baker at the time an instance of a prominent man being compelled to deed over; &, if so, what man it was, and about you did state to Mr. Baker about it?

(Objected to by defendant on the ground that it called for hearsay testimony & is leading.)

Ans. It must have been from six months to a I was a member, but I couldn't tell the time. I was on two or three committees. I did state so to Mr. Baker; it was Mr. Hitchcock.

9. What did you state to Mr. Baker about that time, if anything, as to the futility of fighting against the Claim Club? Please give your language.

(Objected to by def't on the ground that it calls for hearsay testimony and is leading.)

Ans. I told him I wouldn't like to take the chances of backing against it.

101 10. What did you say to him, if anything, about deeding over the land to them who claimed it, if you were in his place, under the circumstances?

(Objected to by def't as leading, & calling for hearsay testimony.)

Ans. I don't recollect.

11. About how late in that summer or fall did the Claim Club continue in full force?

Ans. I don't recollect about what time the power of the club terminated; I suppose it was in force at that time, or I shouldn't had any fears of it.

12. Was you acquainted with Roswell G. Pierce, by reputation or otherwise, about that time? & state whether or not he was reported to be wealthy & held, or claimed to hold, a large quantity of claims in & about Omaha.

(Objected to by def't as immaterial.)

Ans. I knew a Mr. Pierce, said to be of New York, and saw here; he had the reputation of being a wealthy man, and had the reputation of claiming or owning a good deal about this section of country.

13. How was that land protected for him until it was entered from the government of the United States?

102 Ans. As far as I could hear; I was a committee on investigation—it was held principally in other men's names—in some instances by men where hired by the month to hold them.

(Def't objected to the answer of the witness as hearsay & not reliable.)

14. Why were these claims not jumped & taken away from Mr. Pierce before their entry from the government of the United States?

103 Ans. My understanding was they were entered in the claim-book in others' names beside Mr. Pierces'.

15. Why was that done?

Ans. Because our club rules were that no one should hold over three hundred and twenty acres.

16. About how many acres did you ascertain upon investigation did Pierce claim & hold & be protected in by the club during the spring and summer of 1857.

(Objected to by def't as hearsay testimony.)

Ans. I don't recollect positively; my impression is now that it was near twenty-three hundred acres, as near as I can remember.

Cross-examination by def't.

Ques. 1. When did you attend any meeting of the club the last time?

(Objected to by comp't as immaterial.)

Ans. It was late in the spring or early in the summer of 1857.

2. Are you, of your own personal knowledge, acquainted with any particular transaction of the club after that time? If so, state what the same were.

(Objected to by comp't as immaterial.)

104 Ans. I have no recollection of any particular transaction after the spring or early part of the summer of 1857.

3. Did you find in the investigation which you say you made that Pierce held any claims in his own name?

(Objected to by comp't as immaterial.)

Ans. I am not positive, but I think he held one.

4. What claim was that?

Ans. I am not positive where it was; it was less than the club allowed them to hold, I think. It was one hundred and sixty or one hundred & eighty acres.

5. About where did it lie?

Ans. From the most information I could get of it, it was one he bought of T. B. Cummings. I don't know where it was.

6. Did you not hear complaints made pretty generally against Hanscom, Poppleton, & others, who had been active & influential members of the club, that they, after pre-empting their lands, withdrew from it or from active support of it.

(Objected to by comp't as not proper cross-examination & leading.)

105 Ans. I have heard such complaints.

7. Did not most members of the club withdraw from it, or from active participation in its affairs, when they had effected their pre-emptions.

(Objected to by comp't as not proper cross-examination, leading, & immaterial, & calling for an answer that no man can answer intelligably.)

Ans. As far as my understanding of the club and duties of members was, that were to act in concert until all our lands were entered.

(Def't here objects to answer as not responsive to the question.)

8. In point of fact, did not most members shortly after securing their pre-emptions withdraw from active participations in its affairs?

(Objected to by comp't as not proper cross-examination and leading, & asks the witness to answer an unreasonable question, there being 300 or 400 members of the club.)

Ans. There was complaints of some that were not as active after as before their pre-emptions, but I never knew of any of them withdrawing from the club.

106 9. In point of fact, did not most members of the club shortly after securing their pre-emption cease to take any active interest in its affairs, although they did not formally withdraw from it?

(Objected to by complainant as not proper cross-examination & leading, & asks the witness an unreasonable question which he has before answered as fully as any man can.)

Ans. There were some did.

O. P. INGALLS.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, Daniel Gantt, master in chancery, do hereby certify that Alexander H. Baker, Augustus Macon, Allen Root, and O. P. Ingalls, the foregoing named witnesses, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions by them respectively signed were reduced to writing by me, and were written and were subscribed by said witnesses in my presence; and that the same were taken at my office at the date therein stated.

107 Witness my hand this 6th day of June, A. D. 1863.

DAN'L GANTT,
Master in Chancery.

And thereupon afterwards, to wit, on the 14th day of March, A. D. 1864, there was filed in the office of the clerk and register of said court certain depositions; which said depositions are in the words and figures following, to wit:

Depositions of witness taken in a certain cause pending in the district court of Douglas County, in chancery, wherein Alexander H. Baker is complainant and W'm S. T. Morton & others are defendants, in pursuance of an order of reference made by said court and directed to me.

DAN. GANTT, *Master.*

MARCH 8TH, 1864.

Met at my office in Omaha, Douglas County, N. T., at one o'clock p. m.

108 Redick & Briggs appeared as sol's for compl't; Ja's M. Woolworth appears as sol. for defendant.

DAN. GANTT, *Master.*

Alexander H. Baker, a witness produced, sworn, and examined on part of complainant:

1. Did you hear and was you present at the taking of the testimony of Andrew Jackson Hanscom, in this case? and if you were and heard his testimony in reference to a settlement or compromise being made between you and said Pierce, please state what settlement was referred to and whether any was made.

(Objected to by def't Morton as not the best evidence.)

Ans. I was present and heard the testimony of Mr. Hanscom; the settlement that he referred to was between John N. Smith and Mr. Pierce in regard to the lease of grounds for a nursery; there was no settlement made between me and Mr. Pierce in regard to this land, nor by any person representing me.

2. Who were the attorneys representing the respective parties

109 Pierce and Smith, in making that settlement, and when was it made, and how do you know such a settlement was made?

Ans. The attorneys were Seely and Hanscom on the part of Pierce, and Harris & Redick on the part of Smith. It was made, I think, on the 10th of August, 1857. I know from both Smith and Pierce told me they had made such settlement.

Cross-examination.

3. Did they tell you this before or after you proved up?

Ans. It was after, I think. It was after that day. Smith might have told me that night. I am positive Pierce told me afterwards.

4. What was the subject of controversy in the settlement?

Ans. It was a lease of one hundred acres of lands. Pierce had agreed to lease Smith a hundred acres of land for ten years, to be broke and fenced, and good buildings put thereon for the purpose of putting out a nursery. Smith brought his trees here, 200,000 trees, in the spring of

1857, and the land was then all open in commons; no fence and

110 not broke, and Pierce refused to give the lease at the time the trees arrived, and the settlement grew out of this.

5. Was the one hundred acres a part of the land here in controversy?

Ans. No, sir; it was not.

A. H. BAKER.

THE TERRITORY OF NEBRASKA, *County of Douglas, ss:*

I, Daniel Gantt, master in chancery, do hereby certify that A. H. Baker, the above-named witness, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was reduced to writing by me, and subscribed by said witness in my presence, and was taken at my office at the time therein stated.

Witness my hand this 8th day of March, A. D. 1869.

DAN. GANTT,
Master in Chancery.

111 And thereupon afterwards, to wit, on the 16th day of March, A. D. 1865, there was filed in the office of the clerk and register of said court certain depositions; which said depositions are in the words and figures following, to wit:

Deposition of Roswell G. Pierce, taken under and by virtue of the annexed commission.

Roswell G. Pierce, being first duly sworn as is hereinafter , deposes and says, in answer to the—

First interrogatory. What is your name, occupation, and residence?

Roswell G. Pierce; am a real-estate broker in the city of New York; and my residence is Summit, Union County, New Jersey.

Second interrogatory. Do you know Alexander H. Baker and William S. T. Morton, or either of them? If so, how long have you known them, respectively?

Answer to the second interrogatory. I am acquainted with both of them. I have known Baker about eight years; I have known Morton about six years.

Third interrogatory. Are you acquainted with, and had you
112 ever any interest in, the southwest quarter of section eight, in township fifteen north, range thirteen east, in Douglas County, Nebraska? If you had any interest, what was the nature thereof, and how was it acquired?

Answer to the third interrogatory. I am acquainted with the land described as above. I was the owner of the land, and am still, unless the title has been divested by law. I owned the fee of the land; was acquired by purchase from the said Alexander H. Baker, who conveyed it to me on or about the tenth day of August, eighteen hundred and fifty-seven.

Fourth interrogatory. Did you ever pay to the aforesaid Baker, or to any one for him, any consideration for deeding said land? If so, when, where, & to whom, and [and] what did you pay the same?

Answer to the fourth interrogatory. I did pay the said Baker four hundred dollars, in part consideration for the said purchase; and the balance of the consideration, and one of the conditions upon which the said conveyance was made to me, was, a further sum of three hundred
113 dollars, for which I had given my due-bill, which I paid upon the consumation of the matter when the deed was delivered, and took up my due-bill, which is hereto annexed, and marked Exhibit A. And I also executed a lease of the said premises to the said Baker for the term of six years, which lease is hereto annexed, marked Exhibit B. He would not convey the said property unless I would give him the use of it by lease, which I did. The money was paid on or about the tenth day of August, eighteen hundred and fifty-seven; the due-bill of three hundred dollars, above referred to, was paid to John I. Redick, and both sums were paid at Omaha City. The money was paid in current funds, and Baker occupied the premises under said lease.

Fifth interrogatory. Did you have any conversation or conversations with said Baker in reference to said land, and his pre-empting the same, and his deeding the same to you? If so, when, where, in whose presence, was each conversation had, and what was said on each side at the time?

114 Answer to the fifth interrogatory. I did have repeated conversations with Baker in reference to the said land. There was much said on both sides; the particulars I do not now remember. The nego-

tiations for the purchase of the land were conducted, on my behalf, mostly with Baker and his attorneys in the office of Seely & Hanscom, by my attorneys; the result of which was an offer on my part to purchase the land on the terms referred to in my answer to the fourth interrogatory. The conversations took place about the early part of the month of August, eighteen hundred and fifty-seven. I remember that Heman Glass was present on one or more occasions, when we talked about his deeding the property to me, and my leasing it to him. I do not remember his speaking to me in reference to his pre-empting the land, or of anything said about it.

Last interrogatory. If you know any other matter or thing re-
115 lating to the matter in controversy in this cause, declare the same as fully as the same were particularly enquired after.

Answer to the last interrogatory. I wish to say distinctly that the purchase I made of Baker was a bona-fide purchase, and the conveyance made to me was made without the use of any threats or coercion, either by me or by any person authorized by me. It was in pursuance of the said agreement in the ordinary course of business, and he expressed himself entirely satisfied with the terms of the purchase. I remained in Omaha and thereabouts more than a month after the date of the deed, and he had conversations with me in respect to the improvements conditioned for in the lease, and he never expressed a word of dissatisfaction as to the trade which he had made. It was not until long after that that I heard a trumped-up story for the first time, which I understood was circulated by Baker, to the effect that my deed was obtained from him by force, and while he was in duress. The whole story is a
116 fabrication, totally untrue; and so confidently did deem my title to be unimpeachable that I mortgaged these lands, together with other adjoining lands, in good faith, as a security for borrowed money.

ROSWELL G. PIERCE.

STATE OF NEW YORK,
City & County of New York, ss:

I, Calvin C. Woolworth, the commissioner named in the annexed commission, do hereby certify that Roswell G. Pierce personally appeared before me on the eighth day of March, eighteen hundred and sixty-four, at three o'clock p. m., at No. thirty-seven Nassau street, New York City, and was by me first sworn to testify the truth, the whole truth, and nothing but the truth; that thereupon I reduced his depositions to writing in his presence; that he then subscribed the same in my presence; that the foregoing is his deposition so by me taken; that I am not interested in the result of said suit, nor am I related to, or attorney for either of the parties thereto.

C. C. WOOLWORTH,
Commissioner.

117 *Exhibit A.*

Due Jno. I. Redick, or order, three hundred dollars, on demand, for value received.

Omaha, August 7, 1857.

R. G. PIERCE.

On which exhibit is the following endorsement:

Jno. Redick, $300. August 7, 1857.

Exhibit B.

This indenture, made this 10th day of August, 1857, between R. G. Pierce, of the city of New York, and Alexander H. Baker, of Omaha, witnesseth that the said Pierce, in consideration of one dollars to him in hand paid, agrees to lease to the said Baker the following described premises, to wit:

Being one hundred acres of land, situate on the farm known as the Petropaulowski Farm, in Douglas County, Nebraska Territory, and bounded as follows: South and west by the military road; easterly by the lowest land in the ravine running north and south, and just east of the present nursery grounds; and north so far as shall be
118 necessary to make up the aforesaid one hundred acres, for the full term of six years, to commence on the first day of April, 1857, and to end on the 1st day of April, 1863, to be fully completed & ended.

And the said Pierce agrees to enclose the said one hundred acres by a fence, to be completed in time to protect the crops of 1858, similar to that now enclosing the nursery, & is to use the present fence now around the nursery so far as it will go; and agrees to complete the breaking during the year of 1857, of prairie on the said 100 acres; and further agrees to remove the house now occupied by the said Baker, & put it upon the said premises, (in case it shall not be already found on the said premises,) or, at the option of the said Pierce, he may build on the premises aforesaid a house of equal value to the house now occupied by the said Baker instead of the removal before mentioned.

And the said Baker agrees at the expiration of the aforesaid six years, to wit, on the first day of April, eighteen hundred and sixty-three, to surrender up the premises aforesaid to the said Pierce, his heirs
119 or assigns, together with the house and fence to be erected as aforesaid, in as good condition as when taken or put upon the same, (the usual wear and tear by the elements excepted.)

And the said Baker further agrees to keep the said fence and building in good repair, at his own proper cost and expense, and not to underlet the said premises, or any part thereof, without the consent of the said Pierce, or his att'y, first obtained in writing.

It is understood and agreed by these parties hereto, that the premises aforesaid are to be used for the purpose of a nursery of fruit-trees, and a part of the premises may be used for the cultivation of ordinary farm-crops.

In witness whereof the parties to these presents have hereunto set their hands the day and year first above written.

R. G. PIERCE.
A. H. BAKER.

Rec'd Omaha, August 10th, 1857, one dollar in full, according to the terms of the within lease.

R. G. PIERCE.

120 And thereupon afterwards, to wit, on the 19th day of April, A. D. 1864, there was filed in the office of the clerk and register of said court certain depositions; which said depositions are in the words and figures following, to wit:

Depositions of witnesses, taken before Daniel Gantt, master in chancery in and for Douglas County, N. T., in a certain cause pending in the dis-

trict court of Douglas County, Nebraska Territory, in chancery, wherein Alexander H. Baker is complainant, and W. S. T. Morton, impleaded with Roswell G. Pierce, are defendants. In pursuance of an order of reference made by said court and to me directed, upon an order for the examination of witness & notice to counsel of the respective parties, the examination of witnesses was had at my office in Omaha, April 16th, 1864.

DAN. GANTT, *Master*.

Redick & Briggs appears as sol. for complainant. J. M. Wool-
121 worth appears as sol. for def't W'm S. T. Morton.

Heman Glass, a witness produced, sworn, and examined on part of complainant:

Int. 1. What is your occupation & place of residence, and where did you reside in the summer of 1857?

Ans. Occupation, attorney; residence, Omaha; in summer of 1857 I resided at Omaha, Nebraska.

Int. 2. Are you acquainted with the parties to this suit; and, if so, how long have you known them respectively?

Ans. I am not acquainted with Mr. Morton; I have known Mr. Baker since the spring of 1857. I have known Mr. Pierce for the last twenty years.

Int. 3. Are you acquainted with the land pre-empted by the complainant, Baker, and now in dispute; and, if so, how long, and your means of acquaintance?

Ans. I have known the land since the spring of 1857. My means of knowledge of knowing the land is, I have made surveys on the land, and have been over it a great many times.

Int. 4. What was the value of that land in the month of August, 1857, & what would it have sold for during that month; and was
122 you well acquainted with the price of land at that time in that vicinity?

(Objected to by def't Morton as immaterial & irrelevant.)

Ans. I could not give the precise value of the land, but land in that vicinity was considered worth at that time from thirty to fifty dollars per acre, and probaly would have sold as high as that if it had been offered for sale. I was familiar with lands and their value in that vicinity at that time.

Int. 5. What do you know in regard to the existence of the Omaha Claim Club, about the first week in August, 1857?

Ans. I know that there was such an organization in Omaha at that time.

Int. 6. State what you know, if anything, in regard to the complainant, Baker, making a deed to said land to the defendant Pierce; and, if so, under what circumstances was it made and what consideration did he receive, if anything? State your means of knowledge, if you please.

Ans. I know he made a deed of that land; I don't know the circumstances under which it was made; that is, I mean by that I don't
123 know the conditions under which the deed was made at the time of the execution of the deed. I know a good deal that transpired previous to the execution of the deed, but I have no knowledge of any consideration being paid at the time it was made. My means of knowledge of the matter is, that I was acting as agent at the time for Mr. Pierce.

Int. 7. Do you know of any threats being made by Pierce, or any one

representing him, to induce him to make that deed? and state when they were made; how late before the execution of the deed, and your means of knowledge.

(Objected to by def't Morton as irrelevant.)

Ans. I have heard Mr. Pierce threaten Mr. Baker that unless he did make the deed he would call out the Claim Club, and have them put him into the river, & things to that effect. I myself, at the instigation, did represent to Mr. Baker that Mr. Pierce was determined to have the land, and that it would not be safe for him to refuse, & varius conversations to that effect; it was a short time before the making of the deed, but how many days I could not tell.

124 Int. 8. Fix the latest date, according to the best of your recollection, when the last threats were made, and state whether or not a meeting of the Claim Club was demanded; &, if so, at whose intance, and for what purpose.

Ans. I don't remember the day the deed was made, but I think the threats were continued up to the time of the execution of the deed, and my reason for thinking so is that, at the instance of, and under the direction of, Mr. Pierce, I went to Mr. Joseph Barker, at that time president of the Omaha Claim Club, and requested him to call a meeting of the club to compel the execution of this deed by Mr. Baker, and another by John W. Brown; and he, Mr. Barker, promised to call the meeting; but the meeting was not held, for the reason that the deeds were made before the time set for the meeting arrived.

Int. 9. State whether or not you informed Mr. Baker & Mr. Brown of what you had done in regard to [what you had done in regard to] calling the meeting.

Ans. I presume that I did.

Int. 10. Look at the lease here shown you, attached to the dep-
125 osition of Roswell G. Pierce in this suit, and state whether you are familiar with the land therein described, & extent of your knowledge, and state whether or not any portion of that land comprises any portion of the land pre-empted by Baker.

Ans. I am entirely familiar with the land described in the lease, & know every acre of it; I helped to make the survey when the one hundred acres spoken of in the lease was laid out, and no part of the land pre-empted by Mr. Baker is embraced in the lands mentioned in this lease.

Int. 11. State if you know who negotiated and took that lease before referred to from Roswell G. Pierce, and if you should state that it was some one besides Alexander H. Baker, explain how it came to be taken in his name, observing that you witnessed the lease, and know all about it, & your means of knowledge.

(Objected to by def't Morton as immaterial & irrelevant, & seeks to contradict the written instrument.)

Ans. The contracting parties to the lease were R. G. Pierce and
126 John M. Smith; the original bargain for the lease was made between T. G. Goodwell, acting for Pierce, & Mr. Smith; the original contract of the lease was, that Mr. Pierce should give a free lease of the land for a period of ten years, in consideration that Mr. Smith should put a nursery upon it; but when Mr. Pierce came to make the lease, he complained of the length of time, & refused to execute it for ten years; but a compromise was effected, and a lease for six years as exprestd in the lease, & the lease was made to Mr. Baker instead of Mr. Smith, at Mr. Smith's request, as he said that Mr. Baker would have charge of the nursery for him, as he expected to live east. My means

of knowledge was frequent conversations on the subject with Mr. Pierce, Mr. Smith, & Mr. Baker.

Int. 12. State whether or not you ever had any conversations with Mr. Pierce subsequent to getting this deed from Baker; and, if so, what he told you in that regard?

Ans. I presume I must have had conversations with Mr. Pierce regarding this matter after the making of the deed, but I can now recall no particular conversation.

127 Int. 13. State whether or not Roswell G. Pierce was at that time a man of large means & extended influence in this community; and from your knowledge, as his agent at that time, and from all you knew the said Baker, did not deed said land to Pierce in fear of personal violence?

Ans. Mr. Pierce was considered at that time quite wealthy, & his money secured for him a commanding influence that induced Mr. Baker to deed the land; my knowledge only goes to the extent of the threats that were made to compel him to deed it.

Cross-examination.

Int. 1. Is not Baker a man of more than ordinary courage?

(Objected to by compl't as not proper cross-examination.)

Ans. I regard him as a man of fair courage, or ordinary courage.

Int. 2. Is he not a man of more than ordinary courage?

(Objected to by compl't as not proper cross-examination.)

Ans. He may be, though I have seen him pretty badly scared.

128 Int. 3d. When were the first threats made to Baker that you know of personally?

Ans. I can't recall the dates very distinctly, though I think it must have been ten days to two weeks previous to the making of the deed.

Int. 4. What did he say in answer to these threats?

Ans. I can recall particular language. The import was, that he would not make a deed of the land, but take his chances.

Int. 5. When was he threatened the second time, to your knowledge?

Ans. I can't recall the numerical order of the times, though I have a distinct remembrance of going up twice with Mr. Pierce to Mr. Baker's house or place, and I went up different times alone. When Mr Pierce & I went there together, Mr. Pierce made the threats to Mr. Baker, and when I went alone, my object was to represent to Mr. Baker that unless he made the deed there would be serious trouble, & things to that effect.

Int. 6. Was not Baker's uniform reply to the threats made to him, of which you have personal knowledge, that he would not make the deed?

129 Ans. I cannot recall his language, but the import of it was, as I before stated, that he would not make it unless compelled to.

Int. 7. Was a meeting of the club actually called in reference to this matter?

Ans. Mr. Barker, the president of the club, promised to call it, and afterwards told me that he had called it.

Int. 8. Do you know whether a meeting was called or not?

Ans. I have no further knowledge of the matter.

Int. 9. Would you not have likely to have known it, had it been called?

Ans. I propably should have known it, but being told by the president that the meeting had been called, I probably gave no further attention to the matter.

Int. 10. Was the club at this time in the same state of efficiency it was in the spring of 1857?

(Objected to as not proper cross-examination and immaterial.)

Ans. It was not numerically as strong, but efficient enough to do what business was brought before it.

130 Int. 11. Had it not at this time become a mere arbitrating association between adverse claimants to lands?

(Objected to by compl't as not proper cross-examination & immaterial.)

Ans. I think not; it did arbitrate some cases where both parties requested it, and enforced some cases.

Int. 12. Did it enforce any case by any violence after June of that year? If so, state what the case was.

(Objected to by compl't as not proper cross-examination & immaterial.)

Ans. It did enforce at least one case by threats of violence; violence was not used, because the deed was made before the threat were put in execution; that was of Mr. Seamans, who had pre-empted some land claimed by Mr. Irish.

Int. 13. Were you not in charge of all Pierce's lands in this vicinity as long as he had an agent here?

(Objected to by compl't as not proper cross-examination & immaterial.)

Ans. I think not; I think he has had others in employ since I resigned my agency.

Int. 14. When did your agency cease?

(Objected to by compl't as not proper cross-examination & immaterial.)

131 Ans. I can't give the date without referring to papers and books.

Int. 15. Have you ever asserted a pre-emption right to any lands claimed by Pierce in this vicinity?

(Objected to by compl't as not proper cross-examination, impertinent, & immaterial.)

Ans. I have pre-empted a tract of land in this vicinity; a part of it may have been, and it may not have been, within a tract of land Mr. Pierce originally had some claim to, though I never knew the exact extent of Pierce's claim in that direction.

Int. 16. At the time you went upon the land with a view of pre-empting it, did you not suppose it to be a part of the land originally——

(Objected to by compl't as not proper cross-examination, impertinent, & immaterial.)

Ans. I knew Mr. Pierce claimed some land in that vicinity; but whether he claimed the land I went on I never knew or cared.

Int. 17. Did you not suppose he claimed it at the time you first went upon it with a view of pre-empting it?

132 (Objected to by compl't as not proper cross-examination, impertinent, & immaterial.)

Ans. There were different claims held in that vicinity under club-law, and their titles were maintained by club violence, and the particular part that I entered upon was near the corners of different claims under the club, which one of those claims that embraced that tract I don't know.

Int. 18. At the time you entered upon the land with a view of pre-empting it, did you suppose it to be a part of the lands claimed by Pierce?

(Objected to by compl't as not proper cross-examination, impertinent, & immaterial.)

Ans. I supposed he claimed lands in that vicinity, but it may have been upon land claimed by other parties.

Int. 19. At the time you entered upon it, did you not suppose it to be a part of the land claimed by him?

(Objected to by compl't as not proper cross-examination, impertinent, & immaterial.)

Ans. I did not know the location of the claim lines, & I supposed it to be government lands.

Int. 20. Did you suppose he claimed it?

133 (Objected to by compl't as not proper cross-examination, impertinent, & immaterial.)

Ans. I had not a sufficient knowledge of the matter to base a supposition on.

Int. 21. Did you not suppose he claimed it?

(Objected to as not proper cross-examination, immaterial, & impertinent, because the witness has already stated he had no supposition on the subject.)

Ans. I had no knowledge sufficient on which to base a supposition.

Int. 22. Were you his agent at the time?

(Objected to by compl't as not proper cross-examination & immaterial.)

Ans. I was his agent in the summer of 1857.

Int. 23. Were you his agent at the time you first asserted a pre-emption right to the lands?

(Objected to by compl't as not proper cross-examination & immaterial.)

Ans. At the time I first pre-empted a piece of land in 1857, I was agent of Mr. Pierce, though not in making the pre-emption, but only as to his general business; that pre-emption was afterwards cancelled. I afterwards made a second pre-emption, and I had nothing to do

134 with Mr. Pierce in one way or other.

Int. 24. The matter of your agency related to lands claimed by Pierce in this vicinity, did it not?

(Objected to as not proper cross-examination & immaterial.)

Ans. It did, to a certain extent.

Int 25. Did it not almost altogether?

(Objected to by compl't as not proper cross-examination & immaterial.)

Ans. My agency did not extend to all of Mr. Pierce's operations relating to lands in this vicinity. It had no more relation to lands than any other business he had done. It did not embrace all his business relating to lands.

Int. 26. Were you his general agent?

(Objected to by compl't as not proper cross-examination.)

Ans. For some purposes.

Int. 27. What purposes?

More particularly looking after his property, in keeping it in repair. Keeping up improvements. Keeping accounts, and settling bills when I had the money.

Int. 28. Did he authorize you to do this by power of attorney?

135 (Objected to by compl't as not proper cross-examination & immaterial.)

Ans. Our contract was merely verbal.

Int. 29th. Did he never make a power of attorney to you?

Ans. He did afterwards; it is on record.

Int. 30. Did you never hear that some money was made for making the deed from Baker to Pierce, for the land in question?

(Objected to compl't as not proper cross-examination, leading, calls for hearsay testimony, unless the witness should state he heard it from Baker.)

Ans. I did not. I never did.

HEMAN GLASS.

By consent, further examination of witnesses in this cause adjourned to meet in my office, in Omaha, Monday, April 18th, 1864, at 2 o'clock p. m.

DAN. GANTT, *Master.*

THE TERRITORY OF NEBRASKA,
Douglas County, ss:

136 I, Daniel Gantt, one of the masters in chancery in & for said county, do certify that Heman Glass, the above-named witness, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the said case, wherein A. H. Baker is complainant, and W. S. T. Morton et al. are defendants; that the foregoing deposition was reduced to writing by me, & was written in the presence of said witness, & by him subscribed in my presence; & that the same was taken at my office, in Omaha, at the time therein stated.

Witness my hand this 19th day of April, A. D. 1864.

DAN. GANTT,
Master in Chancery.

[U. S. I. R. 5c.]

And thereupon afterwards, to wit, on the 4th day of May, A. D. 1861, there was filed in the office of the clerk and register of said court certain depositions on part of defendant; which cannot now be found among the files of this court.

And thereupon afterwards, to wit, on the 30th day of May, A. D. 1865, there was entered upon the journal record of said court a decree in this cause; which said decree is in the words and figures following, to wit:

137 *Decree.*

In the district court, Douglas County, in chancery.

ALEXANDER H. BAKER
vs.
WILLIAM S. T. MORTON, IMPLEADED WITH Roswell G. Pierce et al.

This cause came on to be heard upon the pleading & the deposition, & the record proceedings, & the judgement mentioned and referred to in said defendant Morton's answer, & was argued by counsel, and the court being fully advised in the premises, it is ordered, adjudged, and decreed that the said complainant's bill of complaint be, and the same is hereby, dismissed as to the said defendant Morton. & it is further ordered, adjudged, and decreed that the said defendant Morton recover against the said complainant Alexander H. Baker the costs of this suit by him expended.

W'M KELLOGG.

138 And thereupon, on the same day and year as last aforesaid, there was entered upon the journal record of said court the stipulation in words and figures following, to wit:

District court, Douglas County, in chancery.

ALEXANDER H. BAKER
vs.
WILLIAM S. T. MORTON, IMPLEADED, &c.

It is hereby stipulated and agreed that this cause be argued before, & determined by, his honor the judge of said court, at chambers, in vacation, and his decree be entered, and have the same force and effect as if made & entered in term.

REDICK & BRIGGS,
Solicitors for Baker.
J. M. WOOLWORTH, *Def't's Sol.*

And thereupon afterwards, to wit, on the 15th day of June, A. D 1865, there was filed in the office of the clerk & register of said court a notice of appeal; which said notice is in the words and figures
139 following, to wit:

District court, Douglas County, in chancery.

ALEXANDER H. BAKER, COMPLAINANT,
vs.
ROSWELL G. PIERCE, W'M S. T. MORTON, et al., defendants.

To said defendant Morton:

Take notice that said complainant hereby gives notice that he will take this cause on appeal, & prosecute the same, to the supreme court of Nebraska, for the purpose of reversing the decree of this court in this cause.

ALEXANDER H. BAKER,
By REDICK & BRIGGS, *his Solicitors.*

Service of a copy of the above notice is hereby admitted.
JA'S M. WOOLWORTH,
Solicitor for Morton.

JUNE 15TH, 1865.

140 TERRITORY OF NEBRASKA,
County of Douglas, ss:

I, William Kellogg, jr., clerk of the district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, do hereby certify that the foregoing transcript is a true and faithful copy of all the proceedings had in the above-entitled cause and remaining of record in this office.

Witness my hand and the seal of said court this 11th day of December, A. D. 1865.

[L. S.] W'M KELLOGG, JR., *Clerk.*

[5c. I. R. stamp, duly cancelled.]

Transcript, 323 folio	$32 30
Stationary	35
Certificate & stamp	30
	$32 95

141 Thereupon afterwards, to wit, on the 2nd day of February, A. D. 1869, there was filed in the office of the clerk of the district court of Douglas County for the district of Nebraska, interrogatories in the words and figures following, to wit:

142 District court for Douglas County, Nebraska.

In chancery.

ALEXANDER H. BAKER, COMPLAINANT,
vs.
ROSWELL G. PIERCE ET AL.

Interrogatories to be administered to witnesses to be produced, sworned, and examined in a certain cause now pending in the said court, in chancery, in which Alexander H. Baker is complainant, and Roswell G. Pierce and others are defendants, under a commission to be issued out of said court, directed to Amos Pritchard, of Janesville, county of Rock, in the State of Wisconsin, on the part of said complainant.

Int. 1st. What is your name, age, occupation, and place of residence?

Int. 2nd. Do you know the parties, complainant and defendants, to this suit, or any or either of them, and which of them, and for how long have you known them respectively?

Int. 3rd. State whether or not you were in the Territory of Nebraska in the summer of 1857. If so, in what part of the Territory, and for how long a time?

Int. 4th. State whether or not you knew anything about the
143 said Alexander H. Baker pre-empting a tract of land near the city of Omaha, in said Territory, to wit, the S. W. ¼ of sec. 8, township 15 north, of range 13 east; and, if so, state about the time he pre-empted; when he made his first improvements on the land; of what they consisted; when he moved on the land with his family; how long he lived on said land before he pre-empted the same, and afterwards. State fully and particularly all the facts and circumstances connected therewith, and also your means of knowledge.

Int. 5th. State whether or not you know of the said Baker's deeding said tract of land after he had, pre-empted the same, to any one; and, if so, when, and to whom, and under what circumstances was said deed made? and also state whether or not any threats of violence were made to said Baker; and, if so, by whom? And also state whether or not the said Baker was forced to deed said land through fear and threats; and, if so, through fear of what, and by whom were the threats made? State fully and particularly all you know about the matters aforesaid, as fully as if you had been particularly interrogated thereto, and also your means of knowledge.

144 Int. 6th. State whether or not threats were made to take the life of said Baker, or use violence to his person, in case he did not deed said land to said Pierce; and, if so, state whether you ever knew

of such an institution as the Omaha Claim Club; and, if so, what was their conduct to Baker in this matter? and also state whether or not any of the agents of said Pierce were members of said club; and also what threats were made by said agents to said Baker. State fully and particularly all you know about it.

Int. 7. State if you know whether or not the said Omaha Claim Club were in the habit of using threats and violence to all persons who violated their rules and regulations relative to the disposal and occupancy of the public lands in the vicinity of Omaha; and also state whether or not it was considered safe for any one to incur the displeasure of said club. State all you know about it.

Int. 8th. State whether or not the said Pierce paid said Baker, or any person for him, any consideration for said land so deeded as aforesaid; and whether he did or did not, state your means of knowledge.

Int. 9th. Do you know of any other facts touching the matters
145 afforesaid, and relative to the deeding of said tract of land, and the circumstances attending the same, which may tend to more fully explain said matter? If so, state fully and at large, in the same manner as if you had been particularly interrogated thereto.

REDICK & BRIGGS, *Att'ys for Pl'ff.*

Upon the said interrogatories appears endorsements in words and figures following, to wit:

In chancery. No. 156. District court, Douglas County. Alexander H. Baker vs. Roswell G. Pierce et al. Interrogatories. Filed Feb. 2, 1861. E. B. Chandler, clerk, by Allen, dep. Redick & Briggs, sol'rs for complainants.

Thereupon afterwards, to wit, on the 11th day of February, A. D. 1869, there issued out of the clerk's office of said court a certain commission to take depositions; which said commission was in the words and figures following, to wit:

146 The district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery, to Amos Pritchard, esquire, of Janesville, in the State of Wisconsin, greeting:

Know you that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize and require you to examine, upon interrogatories annexed to this commission, John N. Smith, in a certain cause pending in this court wherein Alexander H. Baker is plaintiff, and Roswell G. Pierce, E. B. Weston, & William S. T. Morton are defendants, on oath to be by you administered, to take and certify the depositions of the said witnesses, and return the same in accordance with the statute in such case made and provided.

Witness the judge of the district court of the first judicial dis-
147 trict, at the city of Omaha, on the 11th day of February, A. D. 1861.

[L. S.] E. B. CHANDLER, *Register*,
By J. T. ALLAN, *Dep.*

Upon which said commission appears endorsements, to wit:

No. 156. District court, Douglas County. Alexander H. Baker vs. Roswell G. Pierce et al. Commission to take depositions.

The execution of the within commission before me appears from the schedule hereto annexed.

Dated Janesville, Rock Co., Wis., March 6th, 1861.

AMOS P. PRITCHARD,
Commissioner.

In pursuance of the foregoing commission the following depositions were taken and returned, as appears hereinafter, to wit:

148 Depositions of John N. Smith, taken in on action pending in the district court of Douglas County, in the Territory of Nebraska, wherein Alexander H. Baker is complainant and Roswell G. Pierce et al. are defendants, and for said complainant, in pursuance of the commission hereto attached, issued out of said court and bearing date February 11th, 1861.

John N. Smith, of the city of Janesville, Rock County, State of Wisconsin, being first duly sworn by me, as hereinafter certified, deposes as follows:

In answer to the first interrogatory he says:

Interrogatory 1st. My name is John N. Smith; age, forty-one years; occupation, hotel-keeping; residence, Janesville, county of Rock, and State of Wisconsin.

In answer to the second interrogatory he says:

Interrogatory 2nd. I have known Alexander H. Baker, pl'tiff in this action, for twenty years or more. I have known Roswell G. Pierce, defendant in this suit, four years

In answer to the 3rd interrogatory he says:

Interrogatory 3rd. I was in the Territory of Nebraska in the
149 summer of 1857; lived with Alexander H. Baker, near the city of Omaha, from about the middle of June to the 19th of September.

In answer to the fourth interrogatory:

Interrogatory 4th. I do know of Alexander H. Baker's pre-empting a certain tract of land near the city of Omaha, to wit: The southwest quarter of section eight, township fifteen north, of range thirteen east. Made his first improvements before I went to the Territory. Said improvements consisted in the foundation for a house. I helped him to build and complete his house on said foundation. We finished about the 20th of July. He moved in with his family on the 25th of July, 1857, and pre-empted on the 10th of August, 1857, and was living on the land when I left the Territory, which was the 19th of September. I was his witness at the time of his pre-emption. My means of knowledge was that I lived with him from the time I went to the Territory until I left, and transacted all of his business with regard to said piece of land.

In answer to the fifth interrogatory he says:

Interrogatory 5th. I do know of the said Alexander H. Baker's
150 deeding the said piece of land to one Roswell G. Pierce, soon after he pre-empted, through fear from threats made by the Omaha City Claim Club. Threats of the most violent character were made by Roswell G. Pierce, and a meeting of club was called to take into consideration Baker and Brown's cases; notices posted up. Mr. Redic, his counsel, advised him to deed the land, telling him at the same time that a deed given under those circumstances would be void. It was through fear of his life that he deeded the land to Roswell G. Pierce. Said Pierce used in my hearing, twice at Alexander H. Baker's house,

once at land office, threats, saying that the club was under his control; that if he did not convey the land to him (Pierce) he would serve him the same as a certain other man had been served a short time before by the Claim Club, viz, put him into the river and keep him there until he would consent to deed the land to him (Pierce) or was drowned.

In answer to the sixth interrogatory he says:

Interrogatory 6th. I think a man by the name of Hitchcock, also a man by the name of Heman Glass, were agents for said Pierce;
151 also were members of the Claim Club. Threats were frequently made by them that hanging was too good for a claim-jumper, and other threats of such a nature being made that it was thought advisable both by his counsel and myself the best course to be taken was to convey the land to said Pierce and save his life.

In answer to the seventh interrogatory he says:

Interrogatory 7th. Any citizen or person violating the rules of said club incurred their displeasure, and were notified to leave the Territory in a short space of time, and, if they failed to do so, were in some instances treated summarily to a coat of feathers & tar; in others thrown into the river, and various other modes of punishment as the club judged expedient. It was not considered safe to incur the displeasure, in any way, of the said Omaha City Claim Club.

In answer to the eighth interrogatory he says:

Interrogatory 8th. No sum or sums of money was ever paid by Roswell G. Pierce to Alexander H. Baker, or by any one else for said Pierce.
Neither was there ever any agreement or contract of any kind
152 whatever made with the said Alexander H. Baker by Roswell G. Pierce regarding said land. My means of knowledge was that I transacted all of said Baker's business with regard to said land, and know of my own knowledge that said Baker never did receive any money or compensation whatever from said Pierce or any one else for deeding said piece of land, and it was only through fear of his life that he was forced to deed, supposing at the same time that the conveyance was void. He, the said Baker, having moved with his family to Nebraska with a view to become a permanent citizen, and having complied with requirements of the laws of the Territory in making the improvements necessary to entitle him to pre-empt the said 160 acres, was anxious to secure a home for his family; to be driven out or forced to leave the Territory, thereby losing all his improvements and rendering his family destitute, loose his life, or deed the land was the only alternative.

In answer to the ninth interrogatory he says:

Interrogatory 9th. I know of no other matter pertaining to said land except as before stated.

JOHN N. SMITH.

153 Taken, subscribed, and sworn to before me this 6th day of March, 1861.

AMOS P. PRITCHARD,
County Judge.

STATE OF WISCONSIN, *Rock County, ss:*

I, Amos P. Pritchard, judge of the county court of said county of Rock, do hereby certify that the above-named John N. Smith was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition by the said Smith subscribed was reduced to writing by the said Smith, and was by said witness sub-

scribed in my presence, and was taken the sixth day of March, A. D. 1861, at my office in said city.

Witness my hand this 6th day of March, 1861.

AMOS P. PRITCHARD,
Judge of the County Court of Rock County, Wis.

154 STATE OF WISCONSIN, *Rock County, ss:*

I, Levi Alden, clerk of the county court of said county, do hereby certify that Amos P. Pritchard, the person above named, is the judge of the county court of said county, and duly authorized by the law of this State to take depositions, and was such officer at the time of taking the above deposition; that I am acquainted with his signature, and the signature to the above is his.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 6th day of March, 1861, at the city of Janesville, in said county.

[L. S.] LEVI ALDEN, *Clerk.*

155 Thereupon afterwards, to wit, on the 15th day of December' A. D. 1865, there was filed in the office of the clerk of said court a paper in the words and figures following, to wit:

156 The deposition of William S.T. Morton, a witness produced, sworn, & examined by me, a master in chancery, in pursuance of an order of the court in this behalf, and by consent of parties on behalf of the defendant, in a certain cause depending in the district court for Douglas County, in chancery, wherein Alexander H. Baker is complainant, & William S. T. Morton, impleaded with Roswell G. Pierce and Ezra B. Weston, is defendant.

William S. T. Morton, being by me first duly sworn, as hereinafter certified, deposes & says:

1 question. What connection have you with this suit?

Answer. I am defendant.

2 question. State when you first had an intimation that the complainant claimed an interest in the premises in question in this cause.

Answer. I had no intimation of it until after this suit had been brought; not until about [about] the time my answer was put in.

WILLIAM S. T. MORTON.

TERRITORY OF NEBRASKA, *County of Douglas, ss:*

I, Daniel Gantt, one of the masters in chancery of the district court for said county, do hereby certify that on 4th day of May, 1864,

157 W. S. T. Morton was by me first duly sworn to testify the truth, the whole truth, & nothing but the truth; that his deposition above was then by me reduced to writing in his presence, & by him subscribed in my presence.

Witness my hand this 4th day of May, 1864.

DANIEL GANTT, *Master in Ch'y.*

TERRITORY OF NEBRASKA, *County of Douglas, ss:*

J. M. Woolworth, being duly sworn, says the foregoing is a substantial copy of the deposition referred to in the record in this cause by the clerk as lost; that said deposition was duly filed in said cause, & read on the hearing thereof in the district court.

J. M. WOOLWORTH.

Subscribed & sworn to this 13th day of December, 1865.

Upon which said paper appears endorsements in the words & figures following, to wit:

No. 54. In Sup. C'rt. Baker vs. Morton. Deposition.
Filed Dec. 15th, 1865.

W'M KELLOGG, JR., *Clerk.*

158 And afterwards, to wit, on the 17th day of February, A. D. 1867, was issued out of said court a writ of execution, and appears of record in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *District of Nebraska, ss:*

The President of the United States of America to the marshal of the district of Nebraska, greeting:

You are hereby commanded that of the goods and chattels, and for the want thereof then of the lands and tenements, of Alexander H. Baker, in your district, you cause to be made the sum of seventy-two and $\frac{77}{100}$ dollars, the costs of suit which by the judgement of the circuit court of the United States for the district of Nebraska, at the May term thereof, continued by adjournment to the 26th day of June, in the year 1867, William S. T. Morton, impleaded with Roswell G. Pierce and E. S. Weston, defendants, recovered against the said Alexander H. Baker, complainant, with interest thereon from the 11th day of July, A. D. 1867, until paid, together with the further sum of three dollars, ($3\frac{0}{100}$,) the costs of increase on said judgement, and also the costs that may accrue on this writ; and have you the said monies in the said circuit
159 court, before the judges thereof, at the city of Omaha, in said district, at the office of the clerk of said court, within sixty days from the date hereof, to be paid to the persons entitled to receive the same. And have you then there this writ, with your doings thereon.

Witness the Hon. S. P. Chase, Chief Justice of the Supreme Court of the United States, this 17th day of February, A. D. 1867, and the ninety-second year of the independence of the United States of America.

[L. S.] E. B. CHANDLER, *Clerk.*

Upon which said writ of execution appears endorsements in the words and figures following, to wit:

No. 54. United States circuit court, district of Nebraska. Alexander H. Baker vs. William S. T. Morton et al. Execution—damages, ; costs of suit, $72.77; interest, ; increased costs, . Filed February 21st, 1867. E. B. Chandler, clerk. Original costs: clerks, $52.77; marshal, ; att'y's doc. fee, $20 00; att'y's fees on dep's; def't's wit. fees on dep., $72 77. Increased costs—clerk, $3 00; marshal, : satisfied in full. C. E. Yost, U. S. marshal.

160 And afterwards, to wit, on the 11th day of July, A. D. 1867, in the said cause was made and entered by said circuit court an order in the words and figures following, to wit:

ALEXANDER H. BAKER
vs.
WILLIAM S. T. MORTON, IMPLEADED WITH ROSwell G. Pierce and E. S. Weston.

This cause came on to be heard upon the transcript of the record

therein from the late supreme court of the Territory of Nebraska removed into this court.

After hearing Messrs. Redick and Briggs, on behalf of the complainant, and Mr. Woolworth, on behalf of the defendants, this court finds that the deed made by said complainant to the defendant Pierce on the tenth day of August, 1857, conveying the premises in question, was not made while said complainant was in duress, as the said complainant has in his bill alleged. And the court further finds that the said defendants' motion has, by reason of his judgement lien alleged in his answer, a better equity in the said premises than the said complainant.

161 It is therefore adjudged, ordered, and decreed that the bill of complaint of the said complainant be, and the same is, hereby dismissed; and it is further ordered, adjudged, and decreed that the said defendant have and recover of and from the said complainant his costs of this suit by him expended.

And afterwards, to wit, on the 15th day of November, A. D. 1867, a writ of execution was issued out of said court, and appears of record in the words and figures following, to wit:

162 THE UNITED STATES OF AMERICA,
District of Nebraska, ss:

The President of the United States of America to the marshal of the district of Nebraska, greeting:

You are hereby commanded that of the goods and chattels, and for the want thereof then of the lands and tenements, of Alexander H. Baker, in your district, you cause to be made the sum of seventy-two and $\frac{77}{100}$ dollars, the costs of suit which, by the judgement of the circuit court of the United States for the district of Nebraska, at the May term thereof, continued by adjournment to the 26th day of June, in the year 1867, William S. T. Morton, impleaded with Roswell G. Pierce and E. S. Weston, defendants, recovered against the said Alexander H. Baker, complainant, with interest thereon from the 11th day of July, A. D. 1867, until paid, together with the further sum one dollar twenty-five cents costs of increase on said judgement, and also the costs that may accrue on this writ; and have you the said bonds in the said circuit

163 court, before the judges thereof, at the city of Omaha, in said district, at the office of the clerk of said court, within sixty days from the date hereof, to be paid to the persons entitled to receive the same.

And have you then there this writ, with your doings thereon.

Witness the Hon. S. P. Chase, Chief Justice of the Supreme Court of the United States, this fifteenth day of November, A. D. 1867, and in the ninety-second year of the independence of the United States of America.

[SEAL.] E. B. CHANDLER, *Clerk.*

Upon which said writ of execution appears endorsements in the words and figures following, to wit:

54. United States circuit court, dist. of Nebraska. Alexander H. Baker vs. William S. H. Morton et al. Execution. Damages—costs of suit, 72 77; interest, ; increased costs, . Filed Feb. 17th, 1868. E. B. Chandler, clerk. Original costs—clerks, 52 77; marshal, . Att'y's doc. fee, 20 00; fees on dep's, def's wit. fees on dep., 72 77; increased costs—clerk, 1 25; marshal, .

And afterwards, to wit, on the 25th day of Sept., 1869, a citation was issued out of said United States circuit court in words following, to wit:

164 The United States of America to William S. T. Morton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to an appeal from the circuit court of the United States for the district of Nebraska, in a cause lately therein pending in equity, in which Alexander H. Baker is appellant, and you and Roswell G. Pierce and E. B. Weston are appellees, to show cause, if any there be, why the decree rendered against the said appellant by said court should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court of the United States, this 25 day of September, A. D. 1869.

[L. S.] ELMER S. DUNDY,
Judge of the District & Circuit Court of the United States in and for the District of Nebraska.

165 DISTRICT & STATE OF NEBRASKA,
Douglas County, ss:

Jesse Turner, deputy U. S. marshal, of lawful age, being by me first duly sworn according to law, deposes and says that he did, on the 5th day of October, A. D. 1869, acting as the agent of the within-named appellant, serve the within notice & citation by delivering a copy of the same, in Omaha, Nebraska, to James M. Woolworth, esq., attorney & solicitor of record of and for William S. T. Morton, the within-named appellee.

JESSE TURNER.

Subscribed in my presence and sworn to before me this 5th day of October, A. D. 1869.

WATSON B. SMITH, *Clerk.*

Received this writ Oct. 5, 1869, and on same day served same in Douglas County, Neb., by leaving personally with James M. Woolworth, attorney, a true and faithful copy of same.

J. T. HOILE, *U. S. Marshal,*
By JESSE TURNER, *Deputy.*

166 Upon which said paper appears endorsements in the words and figures following, to wit:

No. 54. Alex. H. Baker, appellant, vs. William S. T. Morton et al., appellees. Citation. Filed October 6, 1869. Watson B. Smith, clerk. Redick & Briggs, sol's for appellant.

And afterwards, on the 5th day of October, A. D. 1869, a bond was filed in the clerk's office of said court, which appears of record in words and figures following, to wit:

167 Know all men by these presents that we, Alexander H. Baker, as principal, and Charles Gardner, of Douglas County, Nebraska, as surety, are held and firmly bound unto William S. T. Morton in the full and just sum of five hundred dollars, to be paid to the said Wil-

liam S. T. Morton, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated at Omaha this 5th day of October, A. D. 1869.

Whereas lately, at the adjourned May term of the circuit court of the United States in and for the district of Nebraska, held at Omaha on the tenth day of July, A. D. 1867, in a suit depending in said court between said Alexander H. Baker, appellant, and said William S. T. Morton et al., appellees, a decree was rendered against the said Baker, and he, the said Baker, has appealed from said decree to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and having obtained a citation directed to said William S. T. Morton,
168 citing & admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the obligation is such, that if said Alexander H. Baker shall prosecute his said appeal to effect, and answer all costs if he fails to make his plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

A. H. BAKER.
CHA'S GARDNER.

Signed, sealed, & delivered in the presence of—
CLINTON BRIGGS.

The above bond and surety approved by me this 5th day of Oct., A. D. 1869.

ELMER S. DUNDY, *Judge.*

Upon which said paper appears endorsements in the words and figures following, to wit:

No. 54. Alexander H. Baker, appellant, vs. William S. T. Morton, appellee. Bond for costs.
Filed Oct. 5, 1869.

WATSON B. SMITH, *Clerk.*

169 UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, Watson B. Smith, clerk of the circuit court of the United States for the district and State of Nebraska, certify that the foregoing is a true and faithful transcripts of all the orders, pleadings, &c., in the case of Alexander H. Baker vs. William S. T. Morton et al., of record and on file in my office as such clerk, and the whole thereof, and the endorsements thereon.

Witness my hand and the seal of said court, at Omaha, in said district, this 4th day of November, A. D. 1869.

[SEAL.] WATSON B. SMITH,
Clerk Circuit Court of the U. S. for District of Nebraska.

(Indorsement on cover:) No. 315. Alexander H. Baker, appellant, vs. William S. T. Morton. Nebraska C. C. U. S.
Filed 6th December, 1869.

REC. 315—5

[No. 315.]

Supreme Court of the United States.

ALEX. H. BAKER, APPELLANT,

vs.

WILLIAM S. T. MORTON, APPELLEE.

ARGUMENT FOR APPELLANT.

[No. 315.]

Supreme Court of the United States.

ALEXANDER H. BAKER, APPELLANT,

vs.

WM. S. T. MORTON, APPELLEE.

ARGUMENT FOR APPELLANT.

This suit was originally commenced in the late Territorial Court of Nebraska; but on its admission into the Union, the cause was duly transferred to the Circuit Court of the United States for the District of Nebraska. The latter Court, in July, 1867, rendered a decree dismissing appellant's bill. (Record, page 55.)

The appellant brings the cause here by citation issued and served in September, 1869. (Page 56.)

The evidence shows the value of the land in controversy to be in excess of $2,000. (Pages 17–42.)

STATEMENT OF CASE.

In September, 1860, Baker, the appellant, filed his bill in the Court first above mentioned, alleging, among other things, that he did, in the Spring of 1857, settle upon and improve the southwest quarter of section eight, township fifteen north of

range thirteen east, near Omaha; that he erected a house on the tract, and continued to occupy the same until August 10, 1857, when he entered the land, under the provisions of the pre-emption laws of the United States; that he had been in the continued possession of the land from the time of his settlement up to filing of the bill; that one Roswell G. Pierce, defendant to the bill, claimed the land by virtue of the laws and regulations of an organization known as the "Omaha Claim Club;" that this organization, consisting of more than 100 armed men, sought, and did, to a great extent, control the disposition of the public lands in the vicinity of Omaha, in 1857, in defiance of the laws of the United States; that it frequently resorted to personal violence in enforcing its decrees; that the fact was notorious in Omaha, and that Baker was fully advised in the premises; that as soon as Baker had acquired title to the land, Pierce, together with several other members of the club, went to the house of Baker on said land, and demanded of him a deed of the land, and threatening to take Baker's life by hanging or drowning if he did not comply with the demand; that the club had posted handbills calling the members together to take action against Baker; and that knowing all this, and in great fear of his life, he did, on the 10th of August, 1857, deed over said land to Pierce; that Baker received no consideration whatever for the deed; that Morton, appellee, claims some interest in premises by virtue of a judgment lien. Answer under oath waived. Prays that the deed be declared void and inoperative, and that Pierce be decreed to reconvey to Baker, and for general relief.

Bill taken *pro confesso*, and decree rendered against all of the defendants, (except Morton,) as prayed.

Morton filed an answer, (page 6,) such as it is; but it does not meet any of the allegations of the bill. It simply says, in substance, that Morton does not know anything about the matters alleged. The possession of Baker is admitted, but the admission is coupled with an allegation that Baker is tenant of Pierce. There are no facts alleged in the answer tending to

show a tenancy. All we have is the naked statement that Morton, on information, believes that that relation existed between them. Such a pleading is insufficient even to raise an issue.

The answer further sets up as new matter the fact that Morton loaned Pierce, in August, 1857, about $5,000; that, before filing the bill, he obtained judgment against Pierce; that about $2,500 remains unpaid; and alleging that the judgment is a lien on the land.

General replication filed, but it seems to have been lost, (page 9.)

Two questions are presented by the record:

1. Did Baker make a deed of the land while under duress, caused by threats of personal violence, intimidation, etc., without consideration, or was the transaction his free act and deed? And,

2. If a sufficient showing is made of duress, then has Morton, the judgment creditor, any equities as against Baker's title?

I.

1. Baker testifies (p. 24) that he conveyed the land "from fear of personal violence, and without consideration."

Was there sufficient ground for this fear?

The instrument of terror employed by Pierce and his agents in this business was an organization known as the "Omaha Claim Club." The object and purpose of the club, as appears from the evidence, was to nullify the land laws of the United States, to the end that speculators in "claims" might hold and control the public lands in the vicinity of Omaha, to the exclusion of actual settlers. It numbered from 100 to 200 men. It made laws and promulgated decrees to suit its purposes, and enforced their observance with revolvers, guns, bayonets, ropes and other appliances. It was regularly officered. The sheriff

of the county, secretary of the Territory, mayor of the city, and register and receiver of the land office, all held high positions in the club. It held stated meetings, and when any supposed exigency should arrive, the band would assemble at an hour's notice, and be ready for business.

See testimony of Macon, pages 30, 31, 32.
Root, page 33.
Ingalls, page 34.
Glass, page 42.
Baker, page 22.
Smith, page 19.
Hitchcock, page 17.
Lowe, page 13.

It drove actual settlers from their claims, burned down their cabins, and marched the settlers, surrounded by armed men, to the United States land office, and compelled them to withdraw their filings. If the subject was obstinate, he was taken to the Missouri river, and, with a rope around his neck, thrown in and pulled out, and thrown in again, and the operation repeated as often as might be necessary in order to bring the subject "to his senses," so he would agree to abide the higher law of the land. No banditti ever inspired greater terror than did this armed band. See testimony above referred to.

The appellee may admit all this, but claim that the club was not as efficient on the 10th of August, 1857, as it was before that time. This, however, is not true. Macon testifies (pages 30, 31, 32) that as late as the 15th of August, 1857, the club held a meeting and resolved to put him across the river; that, to save trouble, he fled to Council Bluffs, in Iowa; and that previously members of the club had threatened to shoot him. See, also, testimony of Ingalls, page 36, and of Root, page 33. There can be no doubt on this point.

It remains for us next to consider what this club had to do with Baker. He testifies (page 22) that Pierce claimed the land by virtue of the laws of the club; that Pierce told him he

would have the land at all hazards; that he had plenty of money, and that the leaders of the club were his friends; that he would use the club to force a deed of the land from him; that he would call the club together to act in his (Baker's) case; that he had actually called a meeting; that Glass, Pierce's agent, told Baker that if he did not withdraw his filing, or deed the land to Pierce, he would be served as lots of others had been; that is, thrown into the river. Smith testifies substantially to the same facts. Of course Pierce, in his deposition, denies these facts, and it was expected that he would do so; for a man who perpetrates acts which subjects him to criminal prosecution will not be likely to admit the truth. But Pierce, in one sense, admits these charges by permitting a final decree to be entered against him (page 6).

2. Morton alleges that Baker was the tenant of Pierce, and as such cannot dispute his landlord's title; and to establish this a lease is produced (page 41) purporting to be from Pierce to Baker; but the trouble about the matter is, that the lands described in the lease are no part of the lands in controversy in this suit, but positively another tract. See testimony of Glass, page 43. Although the lease is in form between Pierce and Baker, yet it is shown by the testimony (pages 20, 38, 43) that the lease transaction was between Pierce and the witness Smith, and that Baker had nothing to do with it, with the exception that the lease was taken in his name for convenience merely, Baker being the agent of Smith, who resided abroad, and that he (Baker) was to have exclusive charge of the nursery of fruit trees which were to be put out on the leased land.

3. The law applicable to the state of facts presented by the record is well settled. In the case of Brown *vs.* Pierce, decided by this Court in 1868, (7, Wal. 205) the law on this subject is clearly and forcibly declared. The court says, Mr. Justice Clifford delivering the opinion of court, that "Argument to show that a deed or other written obligation or contract, procured by means of duress, is inoperative and void, is hardly

required, as the proposition is not denied by the respondent. Actual violence is not necessary to constitute duress, even at common law, as understood in the parent country, because consent is the very essence of a contract, and, if there be compulsion, there is no actual consent, and moral compulsion, such as that produced by threats to take life or to inflict great bodily harm, as well as that produced by imprisonment, is everywhere regarded as sufficient, in law, to destroy free agency, without which there can be no contract, because, in that state of the case, there is no consent. Duress, in its more extended sense, means that degree of constraint or danger, either actually inflicted or threatened and impending, which is sufficient, in severity or in apprehension, to overcome the mind and will of a person of ordinary firmness."

The case under consideration is almost in every particular and, in all its facts like the case above cited. The tracts of land are adjoining—the deeds were coerced at the same time and through the same instrumentality, the Omaha Claim Club, led on by Pierce.

Parsons on Contracts, 319.
Willard, Eq. 208.
Chitty on Contracts, 217.
Beecher *vs* Peck, 2 Wis. 261.
2 Greenlief's Evidence, 283.
5, Hill, 154.
15, John, 154.
2, Wend. 243.
6, Mass. 506.
3, N. H. 508.

The evidence shows that this illegal organization was a terror to all who did not submit to its demands, and that Baker was well aware of this—that he had been threatened with personal violence by several members of the organization, and that through fear of his life he made the deed, and without any consideration whatever. It will hardly be claimed that Baker acted prematurely in the matter—that he should have

waited, before he made the deed, until he had been actually thrown into the river, and had come up for the last time; or if hanging had been the mode of punishment adopted that he should have waited until the rope began to draw about his neck. We think that Baker did as any prudent man of ordinary courage would have done and was justified in so doing under the circumstances.

II.

1. It may be claimed that Morton's Judgment is a lien on the land from the fact that the legal title to the same was standing in the name of Pierce at the time the judgment was rendered. But the law is otherwise.

The general lien of a judgment creditor upon the lands of his debtor, is subject to all equities which existed against said lands in favor of a third person, at the time of the recovery of the judgment.

Buchan *vs* Sumner, 2 Barb. Ch. 165.
Ellis *vs* Tousley, 1 Page, 280.
White *vs* Carpenter, 2 Page, 217.
Keirsted *vs* Avery, 4 Page, 9.
6, Barb. 19.
11, " 490.

Morton only claims as a judgment creditor, and his lien, if any, is *general*, not specific. For aught that appears, Morton can make the amount of his judgment out of other property of the judgment debtor; for it is not shown that execution has been issued and returned unsatisfied. It was Morton's duty to first exhaust his legal remedies.

2. But there is no proof in the record showing that Morton has a judgment at all, or the amount or condition of the same. All that appears is from the allegations of the pleadings.

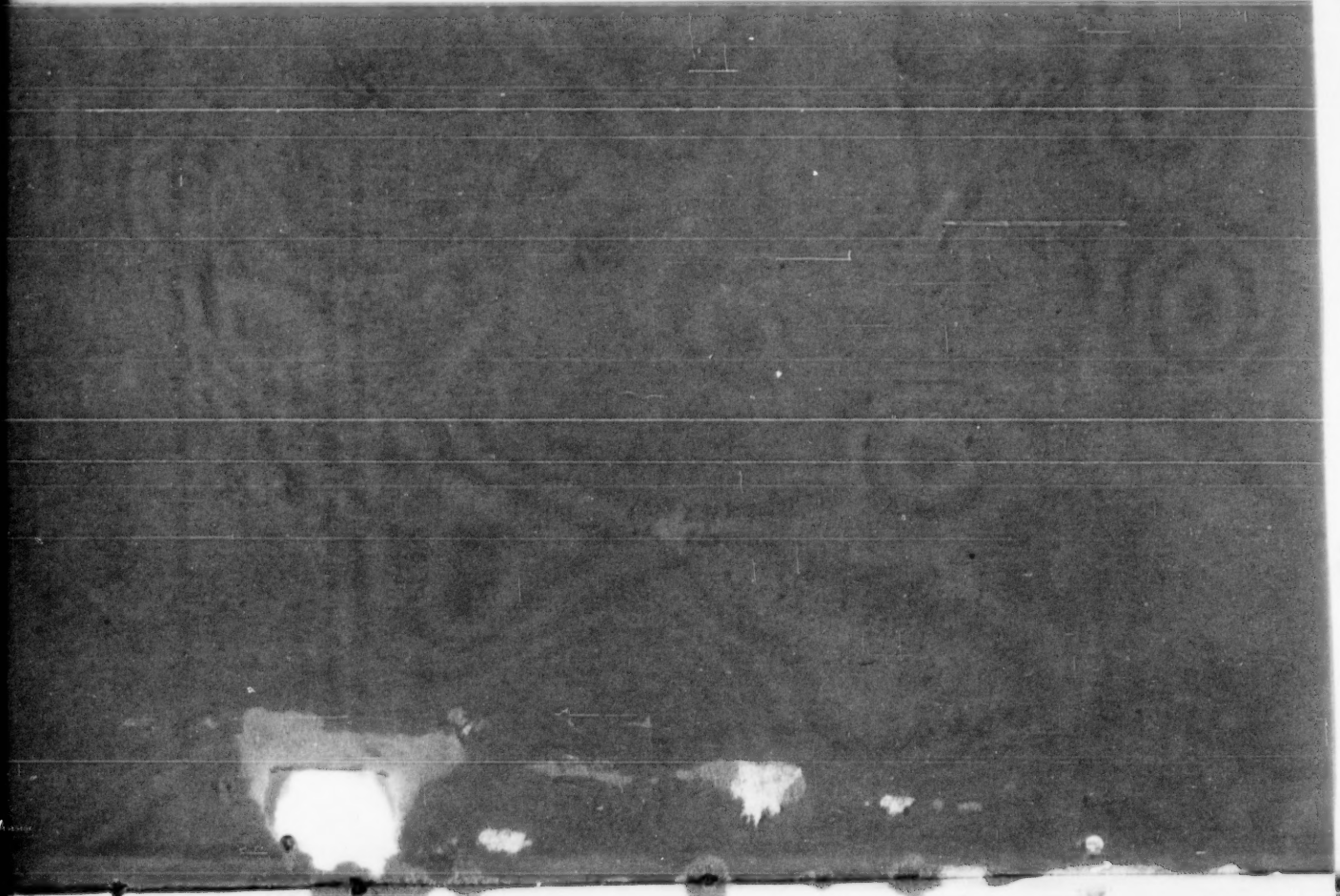
3. Morton claims that he loaned this money to Pierce in August, 1857, about the time the deed was coerced by Pierce from Baker, and the record shows that Baker was then, and

ever since has been in the actual possession of the land. Morton stands charged with notice.

See 2 John, Ch. 38.
2 Page, Ch. 300.
3 Page, Ch. 421.

We ask that the decree of the Court below be reversed, and decree entered in accordance with the prayer of the bill.

REDICK & BRIGGS,
Of Counsel for Appellant.



UNITED STATES SUPREME COURT.

DECEMBER TERM, 1870.

No. 117.

ALEXANDER H. BROWN, Appellant,

v.

WILLIAM S. T. MORTON,

Impleaded with ROSWELL G. PIERCE, *et al.*

Brief and Points for Appellee.

This was originally a bill in chancery, filed on the 7th day of September, 1860, in one of the District Courts of the late Territory of Nebraska, by the appellant here, Alexander H. Baker. Its prayer was for a decree declaring inoperative and void a deed made by him to Roswell G. Pierce on the 10th day of August, 1857, three years before the filing of the bill, conveying a quarter section of land situated in Douglas County in Nebraska, on the ground, as was alleged, that the same was obtained without consideration and by duress.

The allegations are that on the 10th day of August, 1857, Baker pre-empted these lands under the laws of the United States; that at that time an organization existed known as the Omaha Claim Club, composed of about one hundred men, "the object of which was to protect every man, whether resident or non-resident, in holding three hundred and twenty acres of land as a claim on the public land;" that Pierce, a man of large means and influence, "claimed" these lands under the Club; that a few days before the appellant

entered them at the Land Office, Pierce together with Glass, his agent, and a few others, members of the Club, came to his house, and "assured" him that unless he abandoned the lands, or deeded them to Pierce after entering them, Pierce would, with the aid of the Club, kill him by hanging or drowning him, or in some other way; that he "in fear of his life and under the threats aforesaid," promised to deed the land to Pierce; that after he made the entry, these threats were repeated, and on the same day, under the influence of them, he, without any consideration, made the deed.

Pierce was impleaded as a defendant, but did not appear to the bill.

William S. T. Morton was alleged to have a judgment lien on the premises, for which reason he was impleaded. He alone appeared and answered the bill.

He put in issue its allegations, and alleged a judgment in his favor, recovered at the June (1860) term of the court, against Pierce, on which $2,500 remains due and unpaid, and which is a lien on the premises; that Pierce, being insolvent, his debt will be lost if he is deprived of this lien, and that Baker has occupied the premises as Pierce's tenant, every since making the deed.

The cause was heard on pleading and proofs in the District Court, by the then Chief Justice, William Kellogg, who rendered a decree dismissing the bill. It was then carried by appeal to the Supreme Court, where it was pending when Nebraska was admitted into the Union. Thereupon, by reason of the citizenship of the parties, it was removed into the United States Circuit Court. Here it was heard by his Honor, Judge Love of Iowa, acting District Judge of Nebraska, who again rendered a decree dismissing the bill. The plaintiff appeals to this court.

First Point.

The questions raised upon this record are exclusively questions of fact. They are, whether Pierce made the threats charged, and whether Baker made the deed because of the fear which they excited. Upon these questions the testimony is conflicting, and so far as numbers go, the witnesses are nearly equally divided. Two courts, upon a consideration of this testimony, have decided that Baker did not make the deed while in duress. This court will not reverse these decrees, unless they appear clearly to be erroneous. So far from showing that the two eminent judges who rendered them mistook the case, the record shows that upon a consideration of all the circumstances, no other conclusion could have been reached.

Second Point.

It is a circumstance to be noticed, but which remains unexplained, that this deed which was made on the 10th of August, 1857, stood unquestioned until September 7, 1860, a period of three years; and what is further significant is, that Baker worked for Pierce (as he himself testifies at the foot of page 27 of the record), and afterwards settled with Pierce taking his note which he traded off to Pierce's agent, Glass, (as he says at the top of the 28th page). And on the 41st page is a lease which on the same day that the alleged outrage, by which this deed was extracted from him, was committed, Pierce gave him a lease, on the same or adjoining land, having six years to run; and on the 40th page, Pierce says, "I remained in Omaha more than a month after the date of the deed, and he (Baker) had conversations with me in respect to the improvements conditioned for in the lease, and he never expressed a word of dissatisfaction as to the trade which he had made. It was not until long after that, that I heard a trumpt up story for the first time, which, I understood, was circulated by Baker, to the

effect that my deed was obtained from him by force and while he was in duress." And Baker himself says in answer to the 44th question, "Did you ever have any conversation with either Pierce or Glass about making the deed after the same was made?" &c. "~~I never had~~ do not recollect having any conversation with them about it."

Certainly a man so hardly used as he says he was, would not have been likely to have frequently met and conversed and dealt with those who had injured him, and never mentioned the subject for three years.

And it is on the very day that, as he says, he is subjected to fears for his life, that he takes from the man who excited those fears, a lease for six years of a hundred acres of land. It is not material whether these hundred acres were, as Pierce says, a part of the lands conveyed, or whether, as Baker says, they adjoined them, nor whether the lease was for Smith's or Baker's benefit. The circumstance is here adverted to, in order to direct attention to the fact that this man was, as he claims, driven by violent threats against his life, to make a deed conveying away a valuable estate for nothing, and on the very same day assuming the relation of tenant for six years, to the man who had thus outraged him.

This is so unlike the course of conduct, which most men would under such circumstances pursue, that it is difficult to believe it.

Third Point.

It is pretty clear, notwithstanding the conflict of testimony which the record presents, that the deed was made after a negotiation and amicable settlement of the matter, between the parties and upon a consideration paid by Pierce at the time.

Pierce testifies at page 39 of the record, "I did pay the said Baker four hundred dollars in part consideration for the said purchase; and the balance of the consideration, and

one of the conditions upon which the said conveyance was made to me, was, a further sum of three hundred dollars, for which I had given my due bill, which I paid upon the consummation of the matter when the deed was delivered, and took up my due bill, which is hereto annexed, marked exhibit A. And I also executed a lease of the said premises to the said Baker for the term of six years, which lease is hereto annexed, marked exhibit B. He would not convey the said property unless I would give him the use of it by lease, which I did. The money was paid on or about the 10th day of August, eighteen hundred and fifty-seven; the due bill of three hundred dollars above referred to, was paid to John I. Redick, and both sums were paid at Omaha City. The money was paid in current funds, and Baker occupied the premises under said lease. I did have repeated conversations with Baker in reference to the said land. There was much said on both sides; the particulars I do not now remember. The negotiations for the purchase of the land were conducted, on my behalf mostly with Baker and his attorneys in the office of Seely and Hanscom by my attorneys; the result of which was an offer on my part to purchase the land on the terms referred to in my answer to the fourth interrogatory. The conversation took place about the early part of the month of August, eighteen hundred and fifty-seven. I remember that Heman Glass was present on one or more occasions when we talked about his deeding the property to me, and my leasing it to him. I do not remember his speaking to me in reference to his pre-empting the land, or of anything said about it. I wish to say distinctly that the purchase I made of Baker was a bona fide purchase, and the conveyance made to me was made without the use of any threats or coercion, either by me or by any person authorized by me. It was in pursuance of the said agreement in the ordinary course of business, and he expressed himself entirely satisfied with the terms of the purchase."

The due bill which he mentioned is set out on page 40, and the lease on page 41.

Hanscom testifies on page 15, "I was the agent of Roswell G. Pierce from sometime in 1856 to 1857, and did some business for him up to June or July, 1857, and after that time he was here.

Mr. Seely was employed to assist me in trying to make a settlement, and Mr. Seely did the business.

I was present with Mr. Seely at a meeting at his office, and I think that Mr. Smith and Mr. Redick were present, and I suppose they represented Mr. Baker. I so understood at that time. It was, I think, sometime during the summer of 1857, but can't state month. It was pretty warm weather.

I believe there were terms of settlement agreed upon between Mr. Smith and Mr. Redick, and Seely and myself. Mr. Seely did the principal part of the negotiating. If I remember correctly, they were to pay Mr. Baker four hundred dollars, but I wont be positive. I understood at the time, Mr. Baker was to deed over the land he had pre-empted, and I think Mr. B ———, also, but I might be mistaken.'

Upon his cross examination Hanscom testifies:

17. Did you ever have any conversation with Mr. Baker or Mr. Brown about this settlement in any way?

Ans. I don't think I ever did at that time. I don't think I know Mr. Brown.

18. Are you willing to swear that that settlement was made with Mr. Baker and Brown, or with any one representing them, Baker and Brown; or might you not be mistaken, and the settlement had been for the benefit of Smith, growing out of the nursery difficulty?

Ans. I could not swear it was made with Mr. Baker and Brown, but I understood that Mr. Redick and Smith represented them; I don't think I could be mistaken about it, but all people are liable to mistakes. I suppose they represented Baker and Brown at the time, but I don't of my own knowl-

edge from Mr. Baker and Brown, except what Mr. Redick and Smith said.

19. Do you state Mr Smith and myself said we represented Mr. Baker and Brown?

Ans. I can not say what they said, but I understood they were attorneys of Mr. Baker.

20. How much money did you see pass in that settlement; was Baker or his attorneys, who you say represented him, paid any money at that settlement?

Ans. I can't say whether I saw any money paid or not; I know I did not to Mr. Baker, but whether I did to his attorneys I can not say.

21. How long after the settlement you refer to was made, was it until Baker entered the land?

Ans. I do not know when he entered the land, but I supposed it was entered previous to that, the day when we went to settle.

22. What made you suppose?

Ans. I don't know what made me suppose so, but what I based my opinion upon I don't now remember.

* * * * * * * *

I did not see any money paid to Mr. Baker or Brown or his attorneys that I remember of.

Opposed to this clear testimony of Pierce, and the very guarded but still positive testimony of Hanscom, we have that of Baker and of Smith.

Baker says at page 38, that he heard Hanscom's testimony and that the settlement referred to was with reference to a controversy between Smith and Pierce.

Smith says at page 52, that Pierce never paid any money to Baker or to any one for him nor was there any settlement about the land.

Certainly this negative any very general testimony will not be received, against the affirmative and circumstantial

statements of Pierce and Hanscom, supported as they are by the written lease and the due bill presented by Pierce.

Fourth Point.

Admitting that the threats were addressed to Baker, they did not excite any fear on his part. He says himself that his uniform answer to them was one of resolution and defiance.

He gives us his answer to the first threat of Pierce at the top of page 25. He says: "I think I said to him that I had a legal right to that land, and should have it if I could get it." And to Glass he said "he had (better) pitch in, that I meant to have the land if I could get it." The second time Pierce threatened him he said he had not changed his views, and to Glass he said he had a good (hold) of the rope, and that he calculated to hold on to it as long as he could.

He says he did not make the deed until advised by counsel; (see page 25,) so that it appears not to have so much fear, as an expectation of recovering the lands which induced him to convey them.

The threats which he says were made, were not of a character to excite fear. They all were, that the Claim Club would be called upon to act. Violent and illegal as this organization was, it did not act upon the mere word of any one. It had rules which it observed, as Macon says at the top of the 31st page, and Ingalls says on the 26th page. And those who were assailed by it, had the opportunity of an inquiry into the case, (see page 13 and 32.) But more than this, it does not appear that a meeting of the Club was called nor that it met. It is not reasonable to suppose that these threats of an injury which might or might not be inflicted, and which it might or might not be in the power of Pierce to inflict, excited such fear in Baker as induced him to make the deed.

The element of an impending danger which is necessary in every case of duress is totally lacking here. It is, as far as possible from the fact, to claim that Baker was in such

danger threatened and impending, as was sufficient in severity or apprehension to overcome the mind or will of a person of ordinary firmness. Brown and Pierce, 7 Wallace 205.

Fifth Point.

There is no competent evidence in this record, showing that Baker had any valuable interest in this land. He avers that he settled and built a house upon it, that he entered it at the United States Land Office, under the pre-emption law. These allegations are put in issue; and yet we look through this record in vain for any competent evidence of either fact. Who did he pre-empt the land from; if from the Government, under what law, what had he paid, what title did he acquire. These are questions raised but left unanswered by this record.

The truth is, and it is reasonably apparent from this record, that Baker had and he conveyed a mere possessory title to these lands, which the Government could divest at any moment. He conveyed it for a consideration; and considering the nature of his title, he received a sufficient consideration. Afterwards the property rising in value, he resorted to the device of this bill to recover it.

The District Court of the Territory and the Circuit Court of the United States were right, when they found that the deed was not made by Baker while he was in duress.

J. M. WOOLWORTH,

Of Counsel for Appellee.